UNIFORM CIVIL CODE FOR INDIA - A NEED OF THE HOUR

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In a nation of a million traditions, culture and communities like India, personal law have sprung up as one of the key elements of contention among the general population. The requirement for a Uniform Civil code in India has been examined and contended a few times despite everything it stays a standout amongst the most contentious issues commented in our Constitution. A Uniform Civil Code indicates the possibility of same arrangement of common principles or civil rules for the citizens independent of their religion are they Hindus, Muslims or Christians. The common regions secured by a civil code incorporate individual status, rights identified with procurement and administration of property and marriage, adoption and dissolution. In India personal laws are the primary driver of public clash among individuals. It is additionally personally associated with the issue of gender equity. The present paper depicts personal laws in India, the issues of uniform common code and gender equity from a human rights perspective.

INTRODUCTION

India is a secular nation, world’s largest vote based democracy and second most populous nation developed as a noteworthy force in the 1990s. It is militarily solid, has major social impact and a quickly developing and capable economy. With its numerous dialects, societies and religions, India is exceptionally diverse. This is additionally reflected in its federal political framework, whereby power is shared between the central government and 29 states. Religions not just have been serving as the establishment of the way of life of India, yet have had huge impact on Indian legislative issues and society. In India, religion is a lifestyle. It is a basic part of the whole Indian tradition.

India takes after a Common Law framework which was innate from the frontier time. Indeed, even in the present day different enactments which were at first presented by the British are still in continuance, just revived in their existing structures? Dreading resistance from the community pioneers The British ceased from further meddling inside this domestic circle, which left India with an assortment of the personal laws. Case in point the Christians Marriage Act 1872, The Parsi Marriage and Divorce Act 1936, Jews have their uncodified standard marriage law, Muslims and Hindus have their own different personal laws. Muslim law is still essentially unmodified and customary its substance and

1 Gautam Adhikari, The Intolerant Indian: Why We Must Rediscover A Liberal Space (last accessed on 20th August 2016).
methodology. On the other hand Hindus law has all around been secularized and modernized by statutory authorizations. Then again the contemporary family law is in this manner a labyrinth. There are no lex-loci in India in matrimonial issues, matters of family-relations and succession. With a perspective to accomplish consistency of law, its secularization and making it evenhanded and non-biased, the Constitution contains Art.44 of the Directive Principles of State Policy that keeps running as takes after; "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". Uniform Civil Code is an expression which has its roots from the idea of Civil Law Code. A Uniform Civil Code suggests the possibility of same arrangement of common guidelines for the citizens independent of their religion, position, and so on. Common law administers the matters relating to adoption, marriage, succession, inheritance etc. The purpose underlying a uniform common code is to help the idea of national unification by disposal of inconsistencies in light of religious belief systems. All people group in the nation would then remain on a standard stage on civil matters like marriage and divorce, and would not be administered by different personal laws. It is in this sundry connection we need to evaluate the need of Uniform common code.

HISTORY

Uniform Civil Code was an abundantly talked about issue in the Parliament of India in 1948, after India got Independence. On one hand famous identities like Dr. B.R. Ambedkar, bolstered by prominent patriots like KM Munshiji, Gopal Swamy Iyenger, Anantasayam Iyengar and others supported the usage of the Uniform Civil Code; it was unequivocally contradicted by Muslim fundamentalists like Poker Sahib and individuals from different religions. Prior, the Congress Party (which was in power during that period) had given a confirmation that it would permit Muslims to rehearse Islamic personal Law and in this manner the designers of the Indian Constitution, found a trade off by including the establishment of a Uniform Civil Code in the Directive Principles of State Policy in Article – 44 of the Constitution, i.e. it will tie on the State to receive the Uniform Civil Code framework rather it will just go about as influential legitimate provision. Prime Minister Jawaharlal Nehru in the year 1955 considered classifying Personal laws however was confronted with resistance from the devout components. Be that as it may, Nehru was persuaded about it and acquired the Hindu Code Bill in 1955. At the point when the level headed discussion was seething on the Hindu Code Bill in Parliament in May 1955, an

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inquiry was raised by numerous individuals from the Parliament that is the reason just
arranges Hindu ceremonies and traditions and not those of Muslims? The reaction from
Nehru and his law pastor was that Muslims were not prepared for changes. One of the
parts Kripalani had said, 'It is not the (Hindu) Mahasabhits who alone are communal; it
is the government also that is communal, whatever it may say. It is passing a communal
measure. I charge you with communalism because you are bringing forward a law about
monogamy only for Hindu community. Take it from me that the Muslim community is
prepared to have it but you are not brave enough to do it. If you want to have (provision of
divorce) for Hindu community, have it; but have it for the Catholic community also.'

PERSONAL LAWS IN INDIA

India is a nation of million traditions and groups. India is home to numerous celebrated
religions and cultures in the world. All through India's history, religion has been a critical
part of the nation's way of life. Religious differences and religious resilience are both built
up in the nation by the law and custom India is a nation that has secularism revered in its
Constitution yet there is a disagreement in this entire idea of secularism, especially when
it is translated in the personal laws of its subjects. It turns into a befuddling mixture when
Hindus, Muslims, Christians and Parsees have distinctive Personal laws relating to
adoption, marriage, guardianship, succession, divorce etc. Every community in India has
their very own laws if there should arise an occurrence of marriage and separation. These
religious groups exist together as a major aspect of one nation yet the family laws in India
contrasts starting with one religion then onto the next. The reason is that the traditions,
social use and religious understanding of these groups as exercised in their own lives depend
closely on the religion they were conceived in and that which they exercise in the Indian
culture. The arranged individual laws identifying with marriage, separation, succession and
property are:

- Cochin Christian Civil Marriage Act of 1920 (appropriate for Travancore-Cochin
ranges),
- Anand Marriage Act, 1909 (For Sikh relational unions),
- The Indian Christian Marriage Act of 1872 (appropriate to entire of India aside from
zones of former Travancore-Cochin, Manipur and Jammu and Kashmir),
- The Parsi Marriage and Divorce Act, 1937


• Muslim Personal Law (Shariat) Application Act, 1937 (making Shariat laws appropriate to Indian Muslims),

• Hindu Marriage Act, 1955 (appropriate to not simply Hindus, Buddhists and Jains but rather additionally to any individual who is not a Muslim, Christian, Parsi or Jew, and who is not administered by some other law),

CHARACTERIZING UNIFORM CIVIL CODE

Uniform Civil Code by and large cites to that portion of law which manages family undertakings of an individual and indicates uniform law for all natives, independent of his/her religion, position or tribe. The requirement for a uniform common code is engraved in Article 44 (Article 35 in the draft constitution). This article is incorporated into Part IV of the Constitution managing the directive Principles of State Policies. The lawful way of the Directive Principles is such that it can't be upheld by any court and in this way these are non legal rights. The Constitution further calls upon the State to apply these standards in making laws as these standards are fundamental in the administration of the nation. Article 44, which manages the Uniform Civil Code expresses: “The State shall endeavor to secure for the citizens, a uniform civil code throughout the territory of India”. The target of this article is to impact a reconciliation of India by bringing all groups into a typical stage which is at present represented by individual laws which don't frame the embodiment of any religion.

CONTROVERSY: UNIFORM CIVIL CODE

It will likewise make the detachment of the State from the religion more complete and important. The personal laws of all including Hindus can be changed opportune. In alluding personal laws of all religion we can see the male predominance. The issue of personal laws and the Uniform Civil Code was thoroughly immersed in conflictual communal political matters. The 1980s were a time of developing emergency in India. The mainstream agreement had separated and public clashes were heightening, with both dominant part and minority fundamentalism on the ascent. Pratibha Jain recommends revising the Constitution as another option to the uniform civil code.

In India personal laws are the fundamental driver of common clash among individuals. One of the fundamental issues with the nonappearance of a Uniform Civil Code appropriate all through India is that it conflicts with the idea of correspondence which is

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7 Nilanjana Bhaduri Jha, 2003, Does India Really Need a Uniform Civil Code? (last accessed on 20th August 2016).
one of the essential precepts of our Constitution. By having diverse personal laws for various religions we are, it might be said undermining the integrity of the common ethos of India. A Uniform Civil Code will likewise disentangle the lumbering lawful procedures required with the matters administered by personal laws. It will likewise go far in promoting the reasons for secularism, correspondence and national unification. In any case, it is essential to investigate the other side moreover. Still, time is not developing for the execution of the Uniform Civil Code. Polarization in the society along religious lines is still especially alive in our nation. The demolition of mosques and sanctuaries, common uproars are clear pointers towards the way that India is yet to accomplish the level of a steady and develop mainstream democratic system. On the off chance that the Uniform Civil Code is introduction in such a society, it might prompt further complexities. Besides, for Indians, religion is not an easygoing piece of their own life. Here religion assumes an essential part in the lives of the vast majority of the general population.

Subsequently the presentation of the civil code ought to be a well–thoroughly considered and watchful procedure. Another contention against the Uniform Civil Code is that its enforcement will be an infringement of Fundamental Rights conceived by the Constitution. Fundamental Rights are legal rights and are viewed as the most vital rights ensured by the Constitution. Article 26(b) says, “Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.”9 Those individuals who contend against the Uniform Civil Code are of the feeling that for adherents, matters like marriage, succession and divorce are religious issues and the Constitution ensures opportunity of such exercises and along these lines the Uniform Civil Code will be an infringement of that.

This issue has as of now involved extraordinary civil argument as the Supreme Court has perceived that succession, marriage and so forth matters of a secular characteristic can’t be brought inside the certification revered under Article 25 and 26 of the Constitution. While conveying the judgment on the Indian Succession Act, Section 118, the Supreme Court was clear cut in attesting that the privilege to tail one’s personal law is not a Fundamental Right. Their contention is that this code will influence the religious flexibility of minorities. They guarantee that the notions of the minorities are not considered while executing a precedent based law (common law). There are political parties and pioneers who are constantly energetic to capture such issues to enhance their vote banks. We should depoliticize the uniform civil code.10

UNIFORM CIVIL CODE AND GENDER JUSTICE

In the personal laws of the considerable number of communities' injustice on the basis of gender is inbuilt. This should be the aftereffect of the socio-economic conditions under which they advanced. That is the reason there is a need to change the individual laws or achieve a uniform civil code to guarantee balance amongst males and females as well as to realize sexual orientation equity. Females experience numerous troubles and experience serious distress in matters concerning their marriage, separation and succession. Triple talaq, Polygamy, renunciation, etc are only a couple of case to demonstrate the conceivable outcomes of pestering females. Indian women are formally conceded equal status in political rights through the Indian Constitution. Yet, because of the diverse personal laws, females experience disparity, hardship and brutality. Inside the family, their position is pitiable. The question of females’ Human rights is totally disregarded. The personal laws are intended to hold them perpetually under the control of men. Despite the fact that the Constitution of India gives equality to females in specific ranges – lawful and social, they are not viable to guarantee genuine uniformity. The Supreme Court in a couple of judgments has opined that enactment for a typical common civil code as conceived by Article 44 of India’s Constitution ought to be ordered. It said so in Shah Bano's Case in 1985, in Sarla Mudgal Case in 1995 and in Vallamatto case in 2003. A basic take a gander at the protected verbal confrontation, authoritative authorizations and judicial choices plainly demonstrate the absence of reality in guaranteeing equity to females. Gender issues should be looked into very earnestly. A uniform civil code is, along these lines, primarily a matter of gender equity. In the event that it is actualized it will establish the framework for females to beat numerous social shades of malice like bigamy, dowry system and so on which makes a female feel subservient and debased.

CONCLUSION:

As a conclusion I would say that a mainstream India needs a uniform civil code and it can be said that the mere three words and the country breaks into frenzied celebration. This uniform civil code has social, political, and religious angle. The Uniform Civil Code would carve a harmony between protection of fundamental rights and religious ideology of people. The Uniform Civil Code can be effectively presented simply in the wake of accomplishing enhanced levels of proficiency, awareness on different socio-political issues, edified dialogs and expanded social portability. A definitive point of improving uniform common code

ought to be for guaranteeing equity, solidarity and integrity of the country and equity both men and women.