



Uniform Civil Code in Secular India : An Analytical Study

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Abstract : *Since time immemorial, women have been subject to oppression and subjugation. Among the various factors, religion reigns supreme, be it Hinduism or any of the minorities' religions. Patriarchy is reflected in religious practices and women have followed them with rectitude because of orthodox and parochial opinion. With the passage of time, laws were made to safeguard women's rights but personal law was not touched even by the British Government. Even the Makers of the Constitution failed to reach a consensus on this issue. As of now, the matter stands still. Enactment of the UCC under Article 44 of the Constitution has provoked heated debates. The judicial pronouncements have also failed to emancipate women, as law makers did not have the political will to enact it. The time has come for women to*

spearhead a movement against atrocities committed in the name of family affairs. This work has initiated a dialogue after analyzing the varied perceptions of religious priests, women, jurists and politicians. Thus, this work generalizes that women irrespective of all religions, want to defy rigid personal laws and clamour for justice. So, before negating the whole idea of the Uniform Civil Code in Secular India, leaders should deliberate on the decision-making level and of the common man in society at large. They must all fill in the questionnaire provided by the law commission for better results.

Keywords: *Patriarchy, Orthodox, Parochial, Rectitude, Consensus and Spearhead*

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Introduction :

Known as a secular state, we have just accepted secularism as a value but have not asked ourselves what it means to be a secular state. We have just gone on mouthing slogans. Good slogans and Bad slogans, for instance, "Sarva Dharma Sambhava", 'Islam Khatre Mein Hai' and 'Hindustan for Hindus' or 'Hindu Rashtra'. These slogans have done enough harm to Akhand i.e. unified Bharat. But we have not started discussing what happens when the state is secularized. Even in the debate of the Constituent Assembly, the proposal made by K. M. Munshi for inserting the word 'secular' in the Constitution, argues that the state be secular, not simply seeking to counter the danger of sectarian violence, but to emphasize the equality of citizens before the law (Tejani, 2007:251) but it was rejected thrice and the

person who was most vocal in condemning it was Dr. B. R. Ambedkar. Probably that was the reason for not inserting the term 'secular' in the Constitution, though indirectly providing the basis of a secular state by incorporating the right to religious freedom from articles 25 to 28 in the Fundamental Rights chapter. Was it deliberate or inadvertent, the high level of debate. One thing was evident, that the Indian concept of secularism is completely different from the western philosophy. So, keeping this in mind, when India was witnessing steady rise in communal riots, the then Prime Minister, Mrs. Indira Gandhi, despite vehement criticism, incorporated the term 'secular' in the preamble of the Indian Constitution. According to her, it was paramount in order to resurrect secularism in Indian polity. But the insertion of word 'secular' has only served to create confusion; the political parties have taken the opportunity to define their own version of secularism. Some parties think that it is the duty of the state to conceal truth if it is disliked by a community. Some others would give a sort of veto to minority groups. Whatever is not approved by them is not secular. Yet others regard hostility to religion as the secular creed (Sharma, 2002:43). Since time immemorial, religion was held synonymous with ethics and duty. If today, we are at all talking about implementing UCC, it is only to foster peace, harmony and fraternity, without any discrimination whatsoever. It was not an easy task, immediately after independence, as liberated India had witnessed partition followed by a disastrous civil war. The aftermath of the war is still giving nightmares to our founders. Therefore they incorporated article 44 in Directive Principles of the State Policy (non justiciable) because the Constitution Makers were apprehensive of the fact that immediate implementation of UCC may lead to communal frenzies. This becomes evident by studying the Constituent Assembly debate. The members of the Assembly were at loggerheads. The Protagonists professed the idea of UCC to strengthen the secular norms of the country. On the contrary, antagonists found it to be dangerous and an imposition of Hindu culture and laws. Antagonists claimed that UCC would create inconvenience to all religious communities who believe in religion oriented laws, some wanted a categorical provision that nothing in this article shall affect the personal laws of the citizens (Qamar, 2015:11) but the Protagonists argued that along with religious freedom life should be regulated, disciplined and nation consolidated. Further,

Antagonists pointed out that UCC will hinder the ethos of secular India. On the contrary, Protagonists affirmed that people should outgrow the notion given by the British that personal law is religious. Some of the Hindu fundamentalists supported the arguments of the antagonists. It appeared as if secularism and UCC were two antithetical notions in a democratic set up. But presently, Goa is one of the 29 states of India where UCC is blending with secularism though there is one Portuguese Law prevailing. Today, we are in the 21st century, Secularism and UCC are no longer confined to the Indian map. It has now become a global issue and, moreover, there is a paradigm shift in the nature of debate. The thrust area is now gender equality and gender rights in civil matters, which includes marriage, divorce, and inheritance. The formulation of a uniform civil code in India has not only been about the secular versus religious nationalism, but has also been about justice for women within the personal laws of different religious communities. In the debate over the uniform civil code, the question about gender justice has figured prominently. Thus, addressing the problem of gender justice in India without considering the debate over the uniform civil code would be distortion of fact. Similarly, any account of the debate over the uniform civil code, without taking into consideration the issue of gender equality involved therein, remains incomplete. The debate over the uniform civil code has raised a number of questions for the Indian polity, as well as for the women's movement. From the perspective of gender justice, the issue of the uniform civil code has raised questions about women's rights as citizens, which are being compromised at the altar of communal politics, and about the formulation of a gender-just code of family laws without entering into the realm of identity politics. We need to address the issue of UCC in secular India with a feminist or maybe humanist perspective. As champions of modernization, this work talks about creating an egalitarian society where the patriarchy of religion is challenged. And, if we sustain these ideologies, we can create an egalitarian society (Chatterjee, 1986: 341). The crux of the issue is the religious sentiments of the people and the silence of the victims (women) having blind faith in rituals and religious orthodoxies. Behind this work was the objective to assess the credential of secularism, how UCC can affect it and what will be the impact on women's rights and, therefore, we can say that secularism is at crossroads

today. The proliferation of fundamentalisms – Christians, Muslims and Hindus – across the countries appear to prove it right (Tejani, 2007: 1). Unfortunately, even after sixty nine years of independence, none of the Governments has taken any serious step for the implementation of UCC. There are only a few occasions where the government functionaries have shown some courage to speed up the drafting of the *Uniform Civil Code* and bringing it before the legislature (Deshta,2002: 68-70). The Supreme Court of India in its several judgments has favored the move of implementing UCC. However, it was in the famous Shah Bano case that the Supreme Court has responded to this constitutional provision in a major way for the first time (Raju,2003:88-93). But the policy makers are deliberately delaying it for their electoral game.

Objectives :

- To comprehend the Indian Secular Structure amidst diversities.
- To analyse the dialectics between UCC and personal laws and their impact on women.
- To examine the relevance of Article 44 in the purview of Indian multi pluralism.
- To assess the politicization of UCC.

Hypotheses :

- The Uniform Civil Code will affect the secular spirit of Indian democracy.
- The Uniform Civil Code will enhance the status of women in Indian society.

Methodolgy :

This work did not have a predetermined sample size but during the data collection when this work reached a point of data saturation, in other words when new information stopped coming, then collection of data was stopped. This work tried to enhance extensive knowledge of the issue. Therefore, an effort was made to select persons having command on the subject and holding diametrically opposed views. Potential respondents were also focused on and the ease of researcher in gaining access was taken into consideration.

This work adopted the empirical methodology of **Qualitative Research**, where primary data was

collected through **semi structured in-depth interview** of concerned people, secondary data was based on documented work and the technique was of content analysis.

Results and Discussions :

It is 69 years since our country got independence, but women are still not in a position to break the bondage of religious deprivations. The issue of the Uniform Civil Code becomes more complex and confused as the communal forces link it with the patriarchy norms, though, implicitly. So the basics of patriarchy are very important in this whole debate on the Uniform Civil Code (Chavan & Kidwai, 2006:39), but, despite this problem, some women pioneers took the courage to flout the dictates of religion. The patriarchal thinking however, throttled their voice. Some of them knocked at the doors of the court, clamoring for justice. The court, in its various judgments safeguarded the rights of women, which were ruthlessly violated in the name of religion. Some of the famous cases are given below.

The Shah Bano case (1985) was a milestone in the Muslim women's search for justice and the beginning of the political battle over personal law. This is a controversial case of alimony and maintenance in Muslim Law. This case, in fact, highlights how people use religion as a tool for their own personal vendetta. A 60-year-old woman went to court asking for maintenance from her husband, who had divorced her. The Supreme Court passed a masterpiece judgment, giving the right to a Muslim woman of maintenance from her ex-husband *under section 125 of the Cr. P.C.* like any other Indian woman, but then it was overturned by a legislation passed by the parliament – *Muslim Women (Protection of Rights on Divorce) Act, 1986.*

In a historic judgment in *Sarla Mudgal v. Union of India* (1995), on the facts of the case, the Court held that a Hindu marriage continues to exist even after one of the spouses converts to Islam. There is no automatic dissolution of Hindu marriage. It can only be dissolved by a decree of divorce on any of the grounds mentioned in section 13 of the Hindu Marriage Act. Accordingly, the court held that the second marriage of a Hindu after his conversion to Islam was void in terms of Section 494 IPC and the husband was liable to be prosecuted for bigamy.

In *Pragati Varghese v. Cyril George Varghese (1997)*, the Full Bench of the Bombay High Court has struck down Section 10 of the Indian Divorce Act, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it violates the fundamental right of a Christian woman to live with human dignity under Article 21 of the Constitution. The Court also declared Sections 17 and 20 of the Act invalid which provided that an annulment or divorce passed by a District Court was required to be confirmed by a 3 Judge Bench of the High Court. The Court said that Section 10 of the Act compels the wife to continue to live with a man who has deserted her or treated her with cruelty. Such a life is sub-human. There is refusal to dissolve the marriage when the marriage has broken down irretrievably.

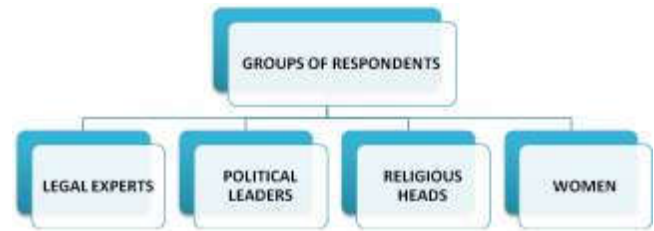
A recent case is that of Shayra Banu, Sociology postgraduate and a mother of two, who appealed against 'arbitrary and instantaneous triple talaq' given by her husband through a letter with the word talaq written on it thrice and ending their 15 years old marriage. She has sought before the court, equality before law and protection against discrimination on the basis of her gender and religion. The case is subjudice.

In the above cases, the issues are different, facts are also different, but the bottom line is that women are marginalized sections of the society, always inferior to men and will have to face the wrath of their male figures in any part of their lives. Though it is the irony of fate, even personal laws as amended in the Hindu community have failed to emancipate women. Gender equity is comfortable in the constitutional model but is not at home in traditional texts nor in the lived experience of many modern "Hindus" (Larson, 2001:145). For example, the Hindu Succession Act 2005 has made women co-partner in inheriting property legally but not socially, as it has marginal popular support. This is because no law can reform a society until and unless women claim it, but that cannot be the excuse of not enacting a law. If the law is made, at least some women can accrue the benefits. At present, the ball is in the court of the Law Commission, which has issued a letter dated 07.10.2016 to fill up the questionnaire on the Uniform Civil Code found on the official site of Law Commission (lawcommissionofindia.nic.in). But it is important to remember that the issue was even previously referred to the Law Commission. The

commission gave its report in favour of the Uniform Civil Code but no enactment was made.

As the issue is very diverse and different concerned groups hold different opinions regarding it, to make the work more balanced and accurate, respondents were divided into different categories. And, to get their various perceptions, a semi-structured in-depth interview was held with several rounds of talks to clear the ambiguity of the respondents.

Different categories and their various perceptions are given below:



The groups mentioned above were also diversified in their opinions and the fact can not be ignored that their views were highly influenced by their practised religion. Diversification in the views of political leaders were based on their party ideologies. From the above, it is quite clear that different perceptions emerged from different groups.

Muslim legal experts were diametrically opposed to each other on the basis of sex differences. Males rejected outright. Females considered it important but demanded a greater awareness drive before enactment. Both male and female experts of the Hindu religion were in accord that India should go in for UCC but, at the same time, felt that India is not prepared. So, deliberations should go on.

Opinions of Hindu priests can be categorized under two heads : Liberal and Conservative. The former prescribed while the latter rejected. Imams gave different interpretations. Some negated the idea of change while others agreed to 'intra- religious' reforms. Christian priests were straightforward and were ready to follow provided it promotes justice and values as enshrined in the Indian Constitution.

The view of BJP leaders, who are ruling at the centre at present, claimed that it was a misnomer to call it a party agenda. It is a value of the Indian Constitution and a must for gender equality. The view of congress leaders, forming the opposition at the centre, believed

that, though the idea was given by the makers of the Indian constitution, today it is being imposed on a minority for the vested interests of a particular party.

The majority of Muslim women feel that they have enough rights granted by Shariyat. Secondly, they do not want any amendment in their personal laws but they are unhappy with diverse interpretations of Imams of different cults. Hindu women were divided into two equal groups. One group was readily willing to accommodate codification for gender equality and the other group strongly felt that it is a political gimmick, as it would never change the attitudinal and behavioral patterns of people. Christian women had a liberal approach towards accommodating changes in their religion. But they were adamant to follow their rituals.

It is almost impossible to reach a consensus on this matter. The perception of UCC has the binary of masculine and feminine. The Muslim community can opt for 'intra-religious uniformity' through codification but will not tolerate any interference in Shariyat, which they regard as the command of Allah. Hindus were relatively in a more comfortable position, because of earlier amendments made in their personal laws which they accommodated after stiff resistance. Buddhism and Sikhism come under Hindu laws and Christianity is in a win-win situation because of their liberal approach. The women mostly clamored for justice and equality, irrespective of their religion, but some radically differed, which can be regarded as their personal opinion. The case of Goa cannot be applied in other states because of multi culturalism. Politicians speak the language of their party and opinion seems to have no originality. Both the Hypotheses of this work were partially proved. The first was related to secularism, while the second said that UCC will uplift the status of women.

Recommendations :

The Uniform Civil Code, though being in Article 44 which is not justiciable, is fundamental to the governance of the country, as decided by the Supreme Court, and must be given a try before just saying a "no". The Law Commission has already given consent. So, again referring the matter to the Law Commission is merely dilly-dally tactics. Immediate response should be given in conformity with the awaited report of the Law Commission. If amendment is not suggested, we may at least codify the personal laws in order to remove the

discrepancies, as in Islamic countries, and safeguard women's rights

The move is not to have a new Uniform National Hindu code. Rather, the code should encompass the major personal elements relating to all Indians. Great care should be taken to ensure that the enactment is not driven by religious or partisan considerations but to upgrade the status of women in society.

The solution to the problem lies in spreading education among the ignorant masses. It is the duty of government to raise the social, educational and economic standard of the ignorant masses, which will ultimately make them aware of their rights and obligations.

It is the duty of social workers, leaders and the government to raise the social, educational and economic standard of 'orthodoxy'. It is the duty of the Muslim intelligentsia to educate the Muslim community about its rights and obligations. It is the duty of academicians to generate a good environment for the adoption of the Uniform Civil Code in India. It is a moral duty of citizens to promote the feelings of secularism and explain the contents of the Uniform Civil Code to the community at large, so that they are made to understand the beneficial effect of the Uniform Civil Code.

To gauge the feeling of the community, the government should hold a referendum in the communities, in which all adult men and women can participate. Before the referendum, the government should propagate its importance through press, radio, television, internet and public meetings conducted by all shades of opinion.

The state should bring social reform slowly and in stages, and the stages may be territorial or community-wise.

The two possible courses of action in deciding the kind of code that should be enacted are:-

An optional Uniform Civil Code should be enacted which will coexist with the various religious personal laws, as in the Special Marriage Act, 1954. The other option is to replace the existing religious-personal-laws with the Uniform Civil Code. The Constitution does not indicate whether the Uniform Civil Code is optional or compulsory. At face value, the first option seems eminently desirable, that is, the state provides a law that

incorporates sex equality but if any individual does not wish to give up his/her religious personal laws, they would continue to be governed by the religious personal laws (Akhtar, 1998: 87).

An attempt should be made to enact a model Uniform Civil Code embodying what is best in all personal laws. It must be a synthesis of the element of goodness in our diverse personal laws. It should represent one, drawn up by consultation between the different communities in India on the principle of give and take.

The solution of the problem of the Muslim Personal Law should be searched within the Islamic law. No effort should be made to cross the limits set by the Islamic law i.e. 'Shariyat'.

The government should never try to impose a Uniform Civil Code of family laws on its citizens, specially the minorities, for the sake of 'national unity' or national integration. Such a move by the government will further alienate the Muslims because they would consider it to be extending the Hindu majority rule over them. This would cause discontent and rebellion in the Muslim community and would be injurious to 'national unity' and 'National integration' (Faridi and Siddiqui , 1985: 4).

Before enacting a Uniform Civil Code throughout the territory of India, the government must also keep in mind the religious freedoms guaranteed under Article 25 and Article 26 of the constitution.

In order to assist the parliament to implement a Uniform Civil Code, a committee of eminent jurists belonging to different religions should be constituted to make the task of uniformity of laws possible. The rules of personal laws as in force in India dealing with marriage, divorce, inheritance, adoption, maintenance, succession etc. must be codified to a large extent on the lines of recommendations given by the Law Commission.

The case of Goa cannot be applied to all the states of India but definitely it can be an eye opener for the government of all states and they can also enact a Uniform Civil Code with certain modifications.

The global scenario also proves that Secularism and a Uniform Civil Code can blend together in harmony in order to create an egalitarian society.

In fine, it can be asserted that Indians, irrespective of their religious affiliations, should give importance to the national interest above sectional interests. A nation can never progress with almost half the population suffering. No religion is above humanity. Therefore, we need to rationalize our thinking and prepare Secular India for a positive change.

Concluding Note :

It is an undisputed fact that, despite constitutional safeguards, statutory provisions, affirmative actions and a plethora of judicial pronouncements to support the cause of women, changes in social attitudes and institutions have not significantly occurred. There has to be total optimism to achieve the requisite goal. It is necessary to accelerate this process of change by deliberate and planned efforts, so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil or reform the society, but it can be the beginning of a positive change. The Indian Judiciary has contributed significantly, but it is a ground reality that there are some limitations on the jurisdiction of the Judiciary. Therefore it cannot take over the functions of other organs of the State viz. Executive and Legislature. In this connection, the Uniform Civil Code, a constitutional mandate, is awaiting the mercy of the Indian Legislature to take the form of law in order to provide equal status to men and women, who are victims of diversities in personal laws (Bohra, vol 3, issue 2). But, before taking any decision, the legislature must work to arrive at a consensus that it is the instrument of gender equality and not an instrument of imposition of the majority's personal law on minorities.

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