

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

A CONTEMPORARY STUDY ON THE UNIFORM CIVIL CODE

AUTHORED BY - *KOMAL N. PATEL & *DR. RUVENDRA VYAS
GOKULGLOBAL UNIVERSITY (DEPARTMENT OF LAW)

Abstract:

This article mainly discussion about the thought of the Uniform Civil Code and its legal extent. In this article, the vital spirit of the Uniform Civil Code is examining and what does it mean and its legal perception and theories. This paper commences with the beginning to the UCC in which it describes the thought of the UCC and also argue on its source or wherever it has derived from. It extra argues the require or require for the UCC under this division itself, that whether the UCC should be realize or not and what are the expert and convict of the similar. As we additional progress towards the move toward of the research paper, this paper speaks about the connection of the UCC with the Secularism and argue how the achievement of the UCC may guide to the dissolution of the nation and how this will guide to the stop working of the silence and settlement between the public.

After that it additional chat about the UCC and the constitutional guarantees. This paper also talks about the judgements and the receiver of the Indian magistrates towards the Uniform Civil Code. Last but not the least, this paper concludes with clear-cut locate of suggestion and winding up.

The researcher has followed secondary data collection. This is a doctrinal study. The investigator has also consumed comments, volume, article, commentary, observations, remarks and other writings to include a variety of observation of the whole host of jurists, with the intent of current a holistic analysis. The researcher has made broad apply Case Laws' in paper, thus like to identify a tendency in the legal announcement.

Keywords: Uniform Civil Code, Personal Laws, Secularism, Constitution, Judiciary

INTRODUCTION: -

India is a earth in which a variety of religion are followed like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, etc., to name a not many. India follows secularism. It is preserve in our Constitution and was included in the preamble after the 42nd Amendment in 1976. The term „secular“ means that the State will not follow any particular religion and neither will the people be discriminated because the religion’s that they tag on. This means that the people will be given the freedom to follow any religion. This is also protecting in our Constitution as a fundamental right under Article 253 and 264. In India, this word is particularly main because it is important to memo that the division of India and Pakistan itself happened because of religion. Religion has without end been used as a attach by the supporting body and has been a basis of divergence since ages. The difference in Israel is also because of religion. In India, dissimilar individual laws manage dissimilar religion. For case in point, the Hindus, Sikhs, Jains and Buddhists are administrating by the Hindu Marriage Act of 1956 in cases connecting to wedding, separation, preservation, etc. The Christians are administrating by the laws connecting to Christianity and Muslims by the Islamic Law. These are three large sect of individual laws in India - Hindu Law, Christian Laws and Islamic Law.¹

At the present the trouble exists in the fact that there are difference and discrepancy within the personal laws. There is no regularity. Also, there has been instances where the personal laws denied the rights of women or did not even give them rights. To counter these weakness, the UCC can be act out. The UCC that means a uniform personal law for all citizens of the country. This policy will change the presented spiritual individual act in India and have a uniform law that will furnish to all the citizens, irrespective of their religion. This has been imagining by the makers of our Constitution under Article 44. But it has been powerfully opposite because it is regard as volatile of Article 25 of the Constitution. This paper plan to approach the concept of UCC in a more practical and pragmatic way to ensure that it can be properly implemented in India and to see if it is even suitable for a country like India. Its Legal width are reserved in brains.

The Uniform Civil Code (UCC) is a concept that has long been debated and discussed in the Indian socio-legal landscape. At its core, a UCC seeks to provide a uniform set of laws governing personal matters like marriage, divorce, inheritance, and property for all citizens,

¹. <https://www.tscltd.com/uniform-civil-code-a-critical-analysis>

irrespective of their religious beliefs or community affiliations. In essence, it calls for the unification of personal laws that currently vary among different religious communities in India, including Hindus, Muslims, Christians, and others.

The relevance of the UCC in India stems from the country's unique diversity, both in terms of religion and culture. India is a secular nation that upholds the principles of equality and justice for all its citizens, regardless of their faith or background. However, this diversity has led to the existence of distinct personal laws for various religious groups, often resulting in disparities in legal rights, particularly concerning family matters.

The debate surrounding the UCC is multifaceted and touches upon various aspects of Indian society. It encompasses issues related to gender equality, individual rights, religious freedom, and social justice. Advocates argue that Aditya Bharat Manubarwala strongly advocated in favour of the Centre in their proposal of UCC that a UCC would harmonise conflicting personal laws, eliminate gender biases inherent in some of these laws, and promote a more equitable and just legal framework.

On the other hand, opponents contend that implementing a UCC could infringe upon religious freedom and cultural practices, potentially alienating minority communities. They argue that personal laws are deeply rooted in religious traditions and should be preserved as part of the unique fabric of Indian society.

The relevance of the UCC in India cannot be overstated. It represents an ongoing constitutional and societal debate that seeks to strike a balance between uniformity and diversity, between individual rights and community rights, and between tradition and modernity. This critical analysis of the constitutional aspects surrounding the UCC will delve deeper into these complexities, exploring the historical context, constitutional framework, legal and ethical implications, political and social factors, comparative perspectives, case studies, and the challenges and prospects associated with this important issue in India.

Historical Context of the Uniform Civil Code (UCC) Debate in India and Key Milestones

The debate surrounding the Uniform Civil Code (UCC) in India is deeply rooted in the country's historical, cultural, and political landscape. Understanding its historical context and key milestones is crucial to comprehending the complexity of this ongoing discussion.

Ancient and Medieval India

In ancient and medieval India, personal laws were primarily governed by customary practices and religious texts specific to various communities. Hindu personal laws were influenced by texts like Manuscript, while Muslim personal laws were derived from the Quran and Hadith. Different communities have their own distinct sets of rules and practices. ²

Colonial Era (19th and early 20th centuries)

Research Methodology:

The researcher has followed secondary data collection. This is a doctrinal study. The investigator has also operated remarks, volume, article, explanation, interpretation, clarification and additional writings to include the different analysis of the crowd of jurists, among the purpose of current a holistic analysis. The investigator has complete broad use of Case Laws in this article, thus like to distinguish a tendency in the legal declaration.

Research Question:

Whether the UCC should be a blend of personal laws or be a new law?

Review of Literature:

The interdependence between law and religion avoid the Indian state from change the religious personal laws, and thus, this go on to rotate down legal equal opportunity to Indian women. (Parashar) Secularism has been integral to India's democracy, but at present, its make use and restrictions are being argue. aware examination on the indecision of secularism in future has been given. (Agnes) Uniform civil code of India is a word that refers to the idea of an overarching common act rules in India. The argue at this point is if the Uniform Civil Code administrate every one public, irrespective of their holy fervour, does it succeed the correctly of people to be administrate under dissimilar individual act support on their religion or customs? (Chaudhary) A list on the UCC was set up in the Indian assembly. however, it not at all happen to a work due to oppositions. single of the foundation on which the doubt was increase was that Islam does not be aware of taking on, plus so, it would be volatile of Article 25 of the Constitution which supply the correctly to perform and confess any spiritual obsession. yet skill. 25 shield merely such perform which are necessary and vital division of some spiritual proviso. The tradition of acceptance was prevailing still in pre-Islamic Arabia.

² 1. Chaudhary, Vaibhav. "A Proposal for Uniform Civil Code for Law of Succession in India." SSRN Electronic Journal, 2010.

Article 38(2) plainly tell so as to the State should endeavour to lessen some discrimination. therefore, an identical Law will merely endeavour to get rid of the irregular position of a kid accept by a Hindu and a kid accept by a nonHindu. (Sharma) This volume explore the interchange among the matter of act, customs, with spiritual assurance in glow of the a variety of intra-community with inter-community argument.

Objectives:

1. To identify with the useful troubles in the achievement of uniform common rules.
2. To learn if the UCC is volatile of Ar. 25 of the Indian Constitution.

UCC AND THE INDIVIDUAL LAWS:

A women are regard as substandard in mainly of the personal topic as balance to men, in particular when it come to the argument of the subject of the marriage or the succession, adoption or even the heritage. Under the Hindu Law particularly, in the year 1955 and 1996, A Hindu woman didn't benefit from the same civil rights beside with the Hindu male be it something or any matter. prior to 1955 polygamy was up to date among the Hindus. The Hindu women couldn't hold some assets as its complete holder excepting in case of Sridham. She had only incomplete land which was approved going on top of the legal last full heirs of the male owner called revisionary on her loss. She personal a limited interest, in the sense that whenever an issue came up for the desertion of the property and mortgaging or selling the property, she could'nt do it on her individual. while it approaches to the issue of acceptance a Hindu women didn't have the correctly to accept a kid on top of her individual. She could'nt be ordinary keeper of her kids through the living of her partner. These examples are illustrative sufficient to demonstrate the patriarchal character of the Indian culture. still although the Hindu act former codified, positive unfair supplies at rest be present still nowadays. For illustration a Hindu female is not a coparcener in Hindu coparceners apart since in a little states similar to Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. therefore, she is not permitted to the allocate into the coparcenary. therefore, it is nothingness to the truth so as to the codification of private act of Hindus hasn't be successful totally in eliminate the gender dissimilarity.

while it appears to talk about the Muslim Law, in the Pre Islamic Arabia, the women benefit from a trivial status because since then it has been a patriarchy since after that. The women since then were consider secondary to men. The initiation of Islam has contributed much while it approaches toward the corrosion of the Muslim women and the acceleration of their troubles.

The Holy Quran provide equivalent human rights to men and women and places women in a reputable situation.

yet, there are assured phase in Islam that submit the position of Muslim women particularly the wives timid and poorer. In Islam, a man is allowable to get married four times while the women cannot and if they do they are treat as unchaste and impure. Women are not even known the right to divorce their husbands, while principally the manner of divorcing the wife by the husband by pronounce triple Talaq is highly unfair. This is inspite of the message given in the Holy Quran. This has been held invalid and illegal, newly in the Allahabad High court judgement.

Yet in the topic of succession, a Muslim woman is discriminated against the allegation of assured Muslim scholars that the Islam in this stare is more progressive and open-minded. The lawful situation is that when two scholars or residuary of opposed sex but of the same degree inherit the property of the departed, the Muslim male obtain twice the distribute of the womanly³.

UCC AND THE INDIAN CONSTITUTION:

The major trouble deceit in the fact that if the makers of Constitution had planned for a identical Civil code to be compulsory in India, after that they should not have placed it under Article 44 of the Constitution as a division of the Directive Principles of the State Policy. The Directive Principles of State Policy contained in the Part IV (Art. 36 - 51), as the name suggests are mere directions to the State. They need not be mandatorily followed and are not enforceable by the Court. They are simply activist responsibility on the State which will assist in good governance. The Preamble of the Indian Constitution evidently states that India is a Secular, Democratic, Republic. This means that there is no State spiritual conviction. A secular state shall not discriminate beside anybody on the earth of religion. A religion is only concerned with relation of man with God. It means that religion should not be obstruct with the everyday life of an person. The procedure of secularisation is intimately linked with the goal of uniform Civil Code like a cause and effect. In the case of S.R. Bommai v. Union of India⁸, as per the Justice Jeevan Reddy, it was held that religion is the topic of human being trust and cannot be mixed with secular activities and can be keeping up by the State by perform a law. In India, there subsist a

³ 2. Hazarika, Raya. "Should India Have a Uniform Civil Code?" SSRN Electronic Journal, 2010.

idea of activist secularism as well-known from the principle of secularism received by the U.S and the European States i.e. there is a wall of separation between the religion and the state.

UCC in Goa:

Goa is the single state in India that has uniform civil code anyway of religion, sexual category, caste. Goa has a familiar people law. Thus Goa is the merely Indian state that has a UCC. In Goa Hindu, Muslim, Christians everyone are jump with the equal law connected to wedding, separation, series. while the Goa grow to be the division of union land in 1961 by the good value of the Goa Daman and Diu management act 1962 the assembly official the Portuguese civil code of 1867 to Goa and shall be modify with rescind by the skilful assembly.

Special Marriage Act, 1954:

This variety of marriage act provide a civil marriage of two humans being of dissimilar gender irrespective of their religious conviction. This law succeeds in Indian to have their wedding external the traditions of their private act. This law is applying in all above the India except for Jammu and Kashmir because they have given the special position under article 370. His law is approximately matching to the Hindu wedding act 1955 this law provide plan of how the law is secularized towards the Hindus. The special marriage acts all Muslim group of people to get married under it. Under this act polygamy was unlawful and the method of succession would be managing by Indian succession act yet the method of separated is also governed by this law. however, for divorce there are careful provisions that are followed in Goa. Muslim community people that have register their marriage in Goa cannot take more than one wife according to this act and throughout the wedding time era all the assets and riches be the owner of by the pair every partner have right in the property the divide half –half of the assets and if partner expire the partly divide of the assets be there leave to the additional. And the other partly goods was separated between the kids in the similar quotient.

CONCLUSION & SUGGESTIONS:

The UCC is not very soon an issue of gender justice, it is also a question of how a nation provide accommodation its own diversity. In India, liberty of religion subsists with additional human rights like equal opportunity and non-discrimination. Instead of getting in indiscriminately or send-off traditions entirely to themselves, India's open-minded multiculturalism strike a stability. It has been more set to change common observe, while offer protection to defenceless persons in different crowd.

Is there a superior mode for India to consult this? The general analysis is that the Western democracies are a template for liberalism. But how do the US and France conceptualise law and religious freedom, the stability among greater part and marginal crowd rights? What do Canada and the UK do? But the trouble is that India cannot have the Western Countries as a model as the circumstances are not parallel. mainly of the western nation, in spite of claim to be secular, tend to show a prejudice towards Christianity and the center East Countries clearly go behind Islamic Law. Even as we move further for a Uniform Civil Code, we should know that law cannot subsist too far separately from societal rule. with no social support, or state ability to apply our own doctrine, we hazard close to people into looking for alternative community justice, like sharia courts or khap panchayats. A common civil code will have to be watchful in its selection. Then there remainder the question of whether it should be mandatory, wipe out all private law, or whether it should permit Indians the choice of choose to live under their own spiritual umbrellas, if they desire. whichever way, it is time that we draw our morals and dissimilarity, in the pursuit of a dream common civil code. In the seven decades since the Constitution was pass, there has been no genuine attempt to even start such a conversation. It is also clear that UCC is not violative of Ar. 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 wedding Act of 1954 which does not extend any favours or bias towards any religion.

REFERENCES

Books:

1. Agnes, Flavia. "The Supreme Court, the Media, and the UCC Debate in India." *The Crisis of Secularism in India*, 2006, pp. 294–315.
2. Chavan, Nandini, and Qutub Jehan Kidwai. *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code*. Hope India Publications, 2006.
3. Dhagamwar, Vasudha, and Indian Law Institute. *Towards the Uniform Civil Code*. 1989.
4. Kumar, Ajai. *Uniform Civil Code: Challenges and Constraints*. 2012.
5. Parashar, Archana. *Women and Family Law Reform in India: UCC and Gender Equality*. 1992

6. Ratnaparkhi, M. S. Uniform Civil Code: An Ignored Constitutional Imperative. Atlantic Publishers & Dist, 1997.
7. Shetreet, Shimon, and Hiram E. Chodosh. Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse. Oxford University Press, 2015.

Journals:

1. Choudhary, Vaibhav. "A Proposal for Uniform Civil Code for Law of Succession in India." SSRN Electronic Journal, 2010.
2. Hazarika, Raya. "Should India Have a Uniform Civil Code?" SSRN Electronic Journal, 2010.
3. Sharma, Sharda Girijesh. "Uniform Civil Code and Adoption Laws in India." SSRN International Journal of Pure and Applied Mathematics Special Issue 4692 Electronic Journal, 2008.
4. Dr. Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes" IRJMST, March 2018.
5. Trishala A, Lakshmi T and Rajeshkumar S, "Physicochemical profile of Acacia catechu bark extract –An in vitro study" IRJMST, April 2018

Case Laws:

1. Mohd Ahmed Khan v. Shah Bano Begum
2. S. R. Bommai v. Union of India
3. Shayara Banu v. Union of India & Ors.
4. Sarla Mudgal v. Union of India
5. John Vallamattom v. Union of India
6. Acharya Jagdishwaranand Avadhut v. Commissioner of Police, Calcutta
7. Lily Thomas, Etc. Etc. vs Union of India & Ors.
8. Agnes Alias Kunjumol vs Regeena Thomas
9. Ahmedabad Women Action Group... vs Union of India
10. The State of Bombay vs Narasu Appa Mali