

CIVIL LAW UNIFORMITY IN RELATIVE TO POSITIVE SECULARISM¹

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Abstract

India is a secular country that does not declare any official or state religion, allowing all of its residents to practice, proclaim, and spread their chosen religion in peace. In India, the idea of positive secularism is practiced, according to which the state has an obligation to make sure that no religion is given preference and to prevent any infringement on the fundamentals of the Indian Constitution. In India, religious matters are governed by the relevant personal laws. These laws cover a variety of topics that are not only religious in nature but are also purely civil in nature, such as marriage, maintenance, succession, adoption, and so on. They are both codified and uncodified. Every person has an equal right under these civil rules, but injustice and inequity have been caused by the unchecked encroachment of civil laws into the private laws of many religions. As a result, consistency in civil laws is essential to guaranteeing justice for all members of society with regard to their civil rights. The idea of uniformity in civil laws came to the Indian Constitution's framers with the possibility of its implementation in the future. It has since been incorporated into the list of Directive Principles mentioned in the document as a directive to the state when creating national policies. To promote the idea of secularism in the nation and allow society to have equal rights under the civil laws without facing discrimination, uniformity in the laws is a basic necessity. The Indian judiciary has demonstrated activism in order to ensure that laws that are prejudiced are repealed and welfare measures are implemented. Therefore, the adoption of the Uniform Civil Code is necessary to ensure the application of secularism in the true sense.

Keywords: religion, gender equality, secularism, and the uniform civil code

OVERVIEW

India is a multilingual, multireligious country with a wide range of traditions, customs, rites, and beliefs. There is also a lot of religious tolerance in the community. Individuals who are members of one of the variety of tribes, religions, races, sects, classes, castes, places of birth, and so forth live together and are bound together in society by their shared language is the idea of secularism. The term "secularism" was coined for the first time by English secularist George J. Holyoake, who sought to establish a social structure distinct from religious aspects without discounting or eliminating preexisting religious convictions. India adheres to the secularist philosophy. By means of the 42nd Amendment Act of 1976, the term "secular" was added to the Indian Constitution's Preamble. Secularism, in its most basic form, is the belief that each and every citizen of the country has the freedom to practice any religion they so choose, free from official interference other than under fair conditions. India's secularism forces the government to refrain from recognizing any official religion and to treat each and every person that embodies "Sarv Dharm Sambhav." ² The fundamental rights guaranteed by the Indian Constitution allow every individual to have a decent life in which they can exercise their rights without facing any form of discrimination. Every individual has the right to practice, preach, and spread any religion they choose. This freedom of religion decision. The nation's religious communities possess the authority to

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² The Foundation, "Is an all-Indian Uniform Civil Code still a pipe dream?" Uniform civil code is still a dream for every LexQuest Indian," according to LexQuest Foundation (2015), which can be seen at <https://www.lexquest.in>

oversee and conduct their own religious matters.³ However, there are limits to the fundamental right to practice one's faith; otherwise, there would be anarchy.

Reasonable limitations on the basis of health, morality, and public order may be applied to the fundamental right to freedom of religion, subject to the other fundamental rights guaranteed by Part III of the Constitution. Every religion has a personal law that governs it. These personal laws are products of the past, not of the present. The origins of these individual Laws have their roots in the ancient era, when society was undergoing rapid change. These personal laws derived from customs, commentaries and digests, different schools, Holy Scriptures, experiences, court rulings, and so forth.⁴ Nevertheless, these private legislation include some unadulterated civil rights that have been included in their purview since the beginning, including as marriage, adoption, succession, inheritance, divorce, etc. Regarding the breaking of the civil laws of the past and today, this incursion has been a major factor in the creation of a number of societal issues. Every member of a society is entitled to exercise their civil rights in a free and equitable manner, free from discrimination based on their gender, caste, color, religion, or any other factor. However, Due to the fact that personal laws control their civil rights, they frequently have difficulties as a result of such rights being violated. There is one set of civil laws for the entire country because of the uniformity of civil laws. It is addressed in Part IV of the Constitution's Article of Directive Principles, which states that "the State shall seek to secure for the people a consistent civil law across all of India."⁵

THE HISTORICAL GROWTH OF CIVIL LAWS

India is the home of numerous religious groups and populations, including Muslims, Christians, and Hindus.

Hinduism is thought to be among the earliest religions, along with Buddhism, Parsis, Jains, Sikhs, Jews, and so on. The idea of secularism has pervaded society from the first, and the administration of justice in both civil and criminal cases was secular in nature under the medieval and Mauryan dynasties. It is thought that there was also a civil law system in place during the Indus Valley Civilization.⁶ The name "religion" refers to believing in a specific deity or goddess; yet, religious societies began enforcing civil laws based on their own cultural customs and established their own laws accordingly.

These civil rules were governed by what were known as the personal laws. Every religion has a personal code of conduct. Since there were no written rules, the ancient and contemporary sources of knowledge were customs, traditions, sacred writings including the Vedas, Manusmritis, Upanishads, Quran, Adi Granth, Bible, and numerous philosophical schools, as well as experiences, court rulings, commentary, and digests.

individual legislation. Because of the patriarchal nature of the society, numerous laws that primarily discriminated against women were created. Within the purview of civil laws in various religions, wicked rituals like triple talaq, sati pratha, child marriage, polygamy, polyandry, etc., were prevalent.

Hindus adhered to the Dharma system, while Qazis and Muftis handled matters pertaining to civil laws in the Muslim community. The other religions also adhered to their own customs when addressing matters of civil laws. When the British arrived in India, A number of reforms were implemented, which resulted in the creation of laws by Parliament. Reformation was required in order to get rid of the negative social concerns related to the civil laws dealt with.

³ The Indian Constitution, arts. 25, 26, 27, 28, 29, 30,

⁴ Anubhuti Rastogi, "Uniform Civil Code," Law Times Journal, 2019

⁵ Art. 44 of the Indian Constitution.

⁶ "Short History of Law in India," THE BAR COUNCIL OF INDIA, accessed April 10, 2022, <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>

Includes various personal laws. Due to the minority communities' persecution regarding their own laws and their fear of being subjugated by the dominant communities, the process moved very slowly. Reformation began in the personal laws, and several Acts pertaining to marriage, adoption, and support were passed for Hindus.

The similar pattern emerged in Muslim law, leading to the enactment of several noteworthy Acts pertaining to marriage, succession⁷, and divorce⁸. Laws pertaining to marriage, divorce, succession, and other topics were also passed by Christians. Parsis passed the laws pertaining to marriage and divorce. Despite the fact that civil laws covered other family and property matters like as marriage, adoption, and upkeep, although these enactments were used to handle affairs, personal laws nonetheless applied to them and still do. According to the premise behind the Uniform Civil Code, legislation pertaining to family and property-related civil matters should be uniform. Social issues pertaining to civil matters shall not be addressed by the personal laws until and unless they are maintained out of their purview be resolved. Therefore, it is necessary to consider implementing a national civil code that is uniform in nature.

PERSONAL LAWS IN THE DOMAIN OF CIVIL LAWS

The matters pertaining to family and proprietary affairs are covered by civil laws. Although they are all related to civil rights, issues like marriage, adoption, divorce, support, inheritance, succession, etc. are pushed under the respective personal laws. Regretfully, rather than being included in the nation's civil laws, these unadulterated civil rights are instead governed by the traditions and practices that are common throughout the many personal laws. This results in the citizens of the society being entitled to different civil rights. Like criminal laws, civil laws are autonomous and necessary to exist independently, but since they fall under the purview of personal laws, it has turned into a concern.

There are several important laws that should be taken into consideration. These include the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, the Christian Marriage Act of 1872, the Indian Succession Act of 1925, and the Parsi Marriage and Divorce Act of 1936. Personal laws are not included in the definition of "laws in force" because incorporated in the Indian Constitution, nevertheless, 15 allowing the civil laws to be controlled by the

Anarchy is only a short step away from personal laws. Numerous demonstrations have taken place in the past, and The bulk of them were worried about the civil laws' uneven entitlements. Consistency within It is intended that civil laws will benefit people's equal enjoyment of their civil rights. Civil Just as criminal proceedings are handled independently, laws should also be handled independently. The Codification of civil law is desperately needed, particularly in relation to issues pertaining to such as succession, marriage, adoption, inheritance, and so forth, which are not treated fairly since they subject to personal laws. We won't be able to truly hope for social fairness till then.

UNIFORM CIVIL CODE: JUDGMENTAL MANNER

Numerous precedent-setting rulings have previously addressed the incidents of the impact of the personal laws on the civil rights of the persons. Initially, considering the situation in relation to to the personal law dispute, when it was argued that Hindus had committed bigamy males was forbidden, while Muslim men were permitted to do the same, which was in contrast with

⁷ the Muslim Personal Law (Shariat) Application Act of 1937

⁸ the Muslim Women (Protection of Rights on Divorce) Act of 1986

the essential entitlement to parity. The Bombay High Court ruled that the personal laws were outside the purview of "laws in force" as defined by the Indian Constitution⁹. Even if it was determined that personal laws violated any fundamental rights, they could not be overturned.¹⁰

The Apex Court maintained this ruling, which subsequently drew harsh criticism because the Constitution is rigid.

India is preeminent, and no legislation could possibly go against its core values.

However, the Supreme Court overturned the ruling in a different ruling, holding that any clause in Any personal law that transgresses the fundamental right is null and void.¹¹

The important decision pushed for the adoption of the civil code, which is uniform in nature.

verdict rendered in relation to women's maintenance rights. The person making the petition was rejected her husband's request for regular maintenance, the defendant, who granted her divorce by articulating the triple talaq. The petitioner then made a move to the Supreme Court to ask for her maintenance right, and the Apex Court expressed sadness over the fact that the incorporation

remains unread as of the universal code of civil laws. The opposing philosophies that are prevalent throughout

Through the common civil law, the personal laws with respect to the civil laws can be taken away. A further important ruling concerned the wicked ritual of triple talaq, wherein the husband would simply pronounce the word "talaq" to grant his wife a divorce thrice. The Apex Court determined that the primary cause of the terrible Triple Talaq custom was breach of both the civil rights and the fundamental values of the constitution. Consequently, it urged the Parliament to abolish it and made clear the necessity of a unified civil code

in India.¹² According to a recent ruling, the question of whether the couple should either by the rules of the Meena tribe, to which they belong, or by Hindu personal law fit in. The Delhi High Court noted that a unified body of civil law was necessary and would make it possible for the concepts to be applied consistently to situations like marriage, divorce, succession, etc.

Another ruling concerned an interfaith union, in which the High Court adopted the viewpoint of a unified civil code and declared that the freedom to select a spouse is unaffected by a person's religion is a personal privilege that each person has only. It added that the introduction of the uniform

It is highly recommended that the Central Government adopt the Uniform Code of Civil Laws, as it is long overdue.

In the well-known Sabarimala Temple case,¹³ the matter concerned the infringement of both gender-based discrimination and the fundamental right to practice one's religion. Such a problem was seen as going against the secularist ideal as no religion can conflict with the basic right of every citizen, thus the Supreme Court emphasized the importance of no law can conflict with the Constitution, according to it. As a result, the court has been acting as

an active part in highlighting the need for the unified civil code's adoption through its conclusions. Therefore, as the Indian Constitution's watchdog, the Supreme Court has been being a major force behind the Legislature's efforts to draft or pass laws that guarantee the equal access to civil rights for all people, as well as the elimination and modification of any laws that are breaking the same rules.

⁹ Article 13 of the Indian Constitution

¹⁰ Ibid

¹¹ NarasuAppa Mali v. The State of Bombay AIR 1952 Bom 84

¹² Mayra Alias Vaishnavi Vilas Shirshikar and Anr v. State of UP and Ors.

¹³ Indian Young Lawyers Association (2019) 11 SCC 1.

POSITIVE SECULARISM AND APPLICATION OF UNIFORM CIVIL CODE

The Indian society is characterized by religious pluralism and adheres to the idea of "positive secularism," which holds that the state actively works to ensure that all religions are treated equally and that no religion is given preferential treatment. The state shall not intervene in the application of personal laws so long as they uphold the fundamental values of secularism and the constitution. The civilization is home to a number of religious communities, each of which has its own customs and rituals around religious matters. These religious groupings are united in society by secularism. However, there is a mandate on the part of the state to make sure that the religious community does not exploit secularism by going beyond the fundamental constitutional ideals of natural fairness, equity, justice, and moral conscience, among others. The main source of worry in society has been the introduction of civil laws into the religious domain. This is the primary reason why societal issues pertaining to civil laws arise. Uniformity in civil law is essential to guaranteeing the actual functioning of positive secularism in India's religious society. The British administration in India first recognized the necessity of the Uniform Civil Code's adoption in 1935 when they issued a report emphasizing the code's implementation. Dr. B.R. Ambedkar thought the Uniform Civil Code was desirable while he was drafting the Indian Constitution, but he left it with the expectation that it would be implemented freely in the future.

There aren't many examples in our society where significant legislative enactments have been made pertaining to civil law uniformity. It has been demonstrated that the Act of 1954¹⁴, which addressed marital concerns, was beneficial to couples who had been having difficulties in their interfaith unions. Before the rule went into effect, couples who wanted to marry a partner who practiced a different faith had to convert to that religion. These issues have since been resolved by the Act, allowing couples to freely exercise their right to marriage while adhering to their own religious beliefs. Thus, the Act guarantees the nondiscrimination principle of the Constitution is applied satisfactorily.

For the purpose of testamentary succession, all religions—Hindus, Jains, Sikhs, Buddhists, Parsis, Christians, and Jews—are covered by the and the Succession Act of 1925. It doesn't apply to Muslims. However, because Hindus are subject to their own law of succession¹⁵, some of its provisions do not apply to them. Similarly, Muslims' law of succession, which derives from their sacred Quran and other sources, differs from Hinduism's. These are a few instances where the universal laws that are applicable on international every religion. While the Indian Succession Act of 1925 applies to other religions, it does not apply to Muslims or Hindus. Uniformity is therefore a vital instrument to guarantee justice with regard to the civil rights of the individuals in the community.

DIFFICULTIES INCLUDED IN PERSONAL LAWS

There have been several occasions in the past where people's civil rights have been infringed upon by the right to freedom of religion. Numerous groups surfaced and objected to the rulings made under uniform laws. These groups are always instilling discriminating ideas and beliefs in the brains of the individuals within the society. This has been impeding the process of enforcing uniformity in civil laws, and the fundamental reason behind all societal problems with civil rights is the incorporation of these rights under the purview of the private laws. In actuality, civil rights are individual rights, and everyone has an equal right to them regardless of gender or religion. They are not religious rights. A number of the personal laws' provisions are inherently discriminatory, which is directly in opposition to the non-discrimination clause of the constitution. For instance, the polygamous system in place in

¹⁴ The Special Marriage Act of 1954

¹⁵ The Hindu Succession Act of 1956

Hindu personal law prohibits the same things as Muslim personal law. Women who are members of a certain community encounter challenges over their entitlement to the same civil rights as women who belong to other communities. One of the main issues surrounding the uniformity of civil laws is the distinction in how they are treated under various personal laws.

The civil code is under flux. Civil laws are laws that should apply equally to every member of society, without exception or bias, and they should be applied consistently across the nation. They are not specific to any one community. The laws that are civil are necessary to become standardized in order to facilitate the peaceful resolution of disputes pertaining to personal laws.

SUMMARY AND RECOMMENDATIONS

For this reason, the Indian constitution's writers included the code of universal civil laws, even though their inclusion has been a contentious topic for many years. within the purview of Part IV of the Constitution's Directive Principles of State Policy for potential future voluntary adoption. Although the Indian Constitution places the Uniform Civil Code under the Directive Principles, which make it obvious that these are essential for the country's government, it magnifies the need for its implementation across the country, but the Parliament has yet to put it into effect. The objective of instituting uniformity in civil laws is to promote equality in society, women's dignity, and national integration. 29 The consistency of civil laws by strengthening the secular

Tolerance can open the door to people fully exercising their rights to equality. In India, the numerous religious communities make personal laws extremely important. The nation's secularism is upheld and these religious communities are given broad protection by the existence of these personal laws. It will result in consistent civil laws regulating each and every regardless of caste, race, religion, class, gender, or other factors, as well as location of birth. Although personal laws are controlled by customs and traditions, the term "laws in force" as defined by the Indian Constitution does not cover them. However, the state may impose reasonable limits if they conflict with any other laws right specified in the Constitution's Third Part. Therefore, the fundamental rights entrenched in Part III of the Constitution serve as a filter and a critical eye over personal laws. Because civil laws deal with equal rights and personal laws are specific to each individual, it is therefore imperative that religions be excluded from their jurisdiction.

His or her specific faith. By allowing people to practice their fundamental right to religion and preventing civil laws from invading their space, constructive secularism can be guaranteed. Allow people to adhere to their personal laws and the practices, traditions, and beliefs that they hold .

The state cannot recognize any religion as official. The welfare of the populace as a whole should be the first consideration when it comes to religious tolerance. One important prerequisite is that the civil laws be uniform.

of the welfare society of today. The nation should make progress toward the ambition of implementing a uniform system of civil laws throughout the entire country. Currently, Goa in India is governed by the Portuguese Code of 1867, which is a Uniform Civil Code that disregards gender, caste, and religion. A common family law exists, and all the All residents of the state, including Hindus, Muslims, Christians, Jews, and Parsis, are required to abide by the same laws regarding marriage, inheritance, divorce, succession, and other matters. Uttarakhand is thought to be the second state in India to implement a uniform civil law code across the state. Public consciousness of the negative aspects of society inside the personal laws and their protests against them has prompted the judiciary to issue historic rulings protecting fundamental rights and civil entitlements. The legislature is forced by these societal reasons to change and eliminate the discriminatory personal legislation at the same time. Equal application of civil laws is mandated, just as codified criminal laws apply to everyone equally is only made possible by civil law homogeneity. Justice will only triumph when the civil laws are applied consistently, without



regard to discrimination, thus the government should take steps to educate the public about the benefits of the code of uniform civil laws in society.