Summary

Evaluation of Multiculturalism and Gender Equality in Family Laws of India from Uniform Civil Code Perspective

Introduction

Indian Society is heterogeneous; it has divided on the basis of religion, caste, and creed. Therefore the reflection of society has also found in family laws. The main family laws in India are Hindu Law, Mahommedan Law, Christian Law, Parsi Law, Jewish Law and Tribal customary Laws. The constitution makers were having a dream to uniform civil code in the field of family laws of India. After 67 years of republic of India; it has not formed uniform civil code. It is research on to way to Uniform Civil code.

Importance of study

India is multicultural and multiethnic country. Every person is belonging to his own religion, Caste, sub-caste, creed. One cannot be just like an Indian. Therefore every religious community is having their own personal laws for example, Hindu law, Muslim Law, Christian Law, Parsi Law, Jewish law and Tribal Customary Laws. In personal matters there is nothing like an Indian Personal Law. If anybody wants to marry outside his personal law or one want to marry in non-religious form; then those persons can marry within The Special Marriage Act, 1954. It is civil marriage form. In this case succession matters are going to govern according to Indian Succession Act, 1925. After marriage the concern parties remain like Hindu, Muslim, Christian, Parsi, Jew or respective Tribe, Caste, sub-caste- which they were before their marriage. It was maintain Cultural Identity. Thus people are not going to govern similar rules of law. Sometimes the laws are conflicting in nature. It causes hardship in day today life of people. It will cause injustice to the needy person. So there is needed to form Uniform Civil Code. It will give justice to the needy persons in general and in particular it gives gender justice.

Reason for selecting topic

India is marching forward in every field of life. Family laws are also changing according to the changing circumstances. India has decided to become super power their laws also change to
suitable to world power. World has entered in twenty first century. It is the century of the global village. Present times Science and technology playing very important role to change the life of people. It is the century of knowledge and knowledge worker. Literacy rate has tremendously increased. Peoples are ready to accept modern principle of human rights and gender justice. Mobility of people within the country and abroad has largely increased. Thus migration has increased due to industrialization, education, trade and commerce etc. Information Technology and electronic media as well as modern medium of communication have brought drastic change in the life of the people.

People are thinking beyond caste, creed. People are doing inter-caste and inter-religious marriages. Therefore conflict of laws is increasing day by day. Now a day’s rates of foreign marriages are increased. The issue of private international law has become very important. India has not having codified Private International law. So conflict of law cases is increasing in day today life. In these changing times new family laws are required. People are fed up to their feudal bonds of Caste and Community approach. The development of science and technology widen the way of secularism. The new concept of surrogacy has emerging new relation of family; where require define these issues; Reframing and unification of family law has became need for hour. Thus for resolving conflict of family laws Uniform Civil Code has become important. It will protect equality and human dignity.

**Literature Review**

It has been discussed under following heads: I) relevant legal and constitutional history of India II) constitutional assembly debate. III) Personal laws passed in British India. Personal laws passed after Indian independence. IV) Opinion of the scholar and jurist. V) Views of higher judiciary on personal laws VI) International conventions, VII) Law Journals, Articles etc.

**Chapter II**

Position of family law with reference to gender equality issues

All world religions are contributed to Indian culture. It has contributed to multiculturalism as well as Indian composite culture. Every personal law is having their own sources. They are having their own personal laws of marriage, divorce, maintenance, succession, adoption.
I)  Marriage: Every personal law has been provisions of marriage. The age of marriage is 18 years for girl and 21 year for the boy. Muslim law prescribed the age of marriage is the age of puberty. So it violate the minimum marriage age.

II)  Bigamy: Personal law of India prohibited polygamy. Muslim personal law allowed husband to marry up to four wives.

III) The prohibition of child marriage Act, 2006. It is secular law therefore it is applicable to all citizens of Indian.

IV)  Registration of marriage is not compulsory in every personal law. But Supreme Court has made it mandatory to register the marriage. State has required taking appropriate steps for registration of marriage.

V)  Maintenance: After divorce provision of maintenance has provided in every personal law; but Muslim personal law was not having this provision. The Muslim Women (Protection of Rights on Divorce) Act, 1986. Provided maintenance. Section 125 of Cr. P.C. is applicable to all section of the society to get maintenance from husband.

The present law of maintenance is susceptible for the reason. It is not biased upon contribution of wife in the marriage. There is no sufficient safeguard against the violation of court order. It is very difficult to prove the income of the husband.

VI)  Adoption: the adoption Act is applicable to Hindus. It is not applicable to the Muslims, Parsi, Christian, and Jewish. The Tribal have their own customary laws of adoption.

VII) Succession: There is no parity in succession laws. Hindu law has brought gender just law. Muslim and Parsi are discriminating against the women. It will give half share to the women than the men.

VIII) Divorce: All personal laws are having the provisions of Divorce. The Christian divorce law is gender bias Woman has having very difficult provision to get divorce as compare to man. In Muslim law provide power of unilateral talak to husband.
Against the wife. Section 29(2) of Hindu Marriage Act, 1956 also validate customary divorce it supports to Patriarchy.

Thus all personal laws are gender bias either in theory or practice.

Chapter III

Approaches to Uniform Civil Code.

There are various approaches of Uniform Civil Code. Some are supporting to it. Some are opposing to it; some are under the garb of Uniform Civil Code wanted to create cultural Hegemony or cultural domination of majority over minority. Some believes it in humanitarian principle; some believes it is striate way interference in religion. Some wanted to implement it forthwith; some wanted to implement it after full development of Society, some wanted to implement it after consensus of all community. Thus there is no uniformity in the approaches of uniform civil code. This chapter analyses the various approaches that may suggest ideas in framing Uniform Civil Code. For the sake of convenience they have been grouped as: (1) Approaches as collected from the Constitutional debates; (2) Approaches as collected from the Constitutional provisions (3) Approaches from comparative study of various family laws of other countries (4) Approaches towards family law as gathered from the provisions of International conventions, Charters, Declarations, Protocols, Guidelines, etc. and (5) Legislation relevant to Uniform Civil Code

In Constituent Assembly also there were to contradictory opinion. One group supported to the Uniform Civil code and the other group opposed to the Uniform Civil Code. The parliament was under take the Hindu Code Bill. It shows the community reforms were started. Uniformity in the large community or majority community reforms was started. Now Under the Hindu law 80 percent population have been governed. The following approaches are for Uniform Civil Code.

i) One approach is that the community reform should start at initial time.

ii) Territorial approach: State wise or the region wise the Uniform Civil code should apply.

iii) The subject wise like Marriage, divorce, succession, maintenance, Adoption etc. should frame.
iv) It should be optional at the initial time
v) It should be made compulsory even at beginning.

The fourth law commission in 1879 recommended that the process of codification comprised of two stages: one codifying the law relating to specific heads, which means on orderly and systematic arrangement of the rules relating to some well-marked department of the field of rural rights and duties. The second stage comprised of computing all these acts into one general code. No attempt had yet been made in India towards achieving a general code.

**Constitutional goal and uniform civil code:**

The legal system of a country at a given time is not creation of one man or one day. It represents the cumulative fruit of the endeavor, experience, thoughtful planning and patient labour of a large number of people through generations. If therefore law is not to be studied merely as body of rules lay down by certain organs (positive approaches against which there have been protest since long). If law is to be studied not merely as a collection of doctrines, dogmas and concept, or as a Static entity, but as an organic growth, a living and breathing mechanism keeping pace with the social changes. (Then there is no escape from the study of legal history)

**Article 44.** Uniform civil code for the citizens - the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

The language used in the Articles seems to be in the nature of commands or constitutional order to the State pursuing it to perform social, economic and cultural functions. In Article 44 the word ‘endeavor’ is used for the objectives to be pursued. It also means that it is obligatory on the part of the state to make the best efforts to achieve the objectives mentioned therein.

What is Code? In legal terminology, a code means a collection or compendium of various laws relating to particular subject, the civil procedure code, the criminal procedure code, Indian penal Code, Land revenue code, etc. It has already enacted in India.

While many parts of civil law has already been codified in enactments applicable to the entire population of India. Such as the civil procedure code, Indian evidence Act, Transfer of property
Act. Etc. Controversy has arisen as to the formation or personal law of the parties relating to matters such as marriage and divorce succession, adoption.

**The relevant provision in the constitution to the Uniform Civil Code is as follows:**

The Preamble is the philosophy of the constitution. Fundamental Rights article: 13, 14, 15, 16, 17, 21, 23, 24, 25, 26, 27, 28 and 32. Directive Principle of state policy Article 37, 38, 39, and 39A are supporter of UCC. Fundamental Duties; Article 51A; also directly related to Article 44.

Higher Judiciary has interpreted the law as and when comes before the Court in various cases rightly point out to the State to pass the Uniform Civil Code.

**International approaches towards family law.**

Prof. Tahir Mahmood did comparative study of Muslim family law and shown family reforms in Muslim the Muslim world. He gave the multifarious Reforms in Muslim family law are as follows:

I) Intra-Doctrinal Reform.
II) Extra-Doctrinal Reform.
III) Regulatory Reform. And
IV) Codification.

Thus the various ways have been applied to reform the Muslim family all over the world.

Prof. Donald Horowitz describes four models of explaining legal chang. Those are:

I) The evolutionist model.
II) The utilitarian model.
III) The social change model. And
IV) The internationalist model.

General analysis of Church-State Relations and models of minority culture recognition are also gives new aspect of law reform.

**There are five models of church-state relations exist; those are as follows:**

I) The Theocratic Model.
II) The Absolute-Secular Model.
III) The separation of State and religion Model.
IV) The Establish Church Model.
V) The Acknowledged Religions Model,

**Some important country and their models are as follows:**

I) India: It is Democratic Liberal Model.
II) England: It is established Church Model.
III) Turkey: It is aggressive secular model.
IV) French: It is assimilationist model.
V) Canada: It is the pluralist model.
VI) USA: It is melting pot model.
VII) Israel: It is pluralistic model.
VIII) Indonesia: It is societal change model.
IX) Kenya: It is religious model.
X) South Africa: It is utilitarianism model.
XII) Indian Model for Uniform Civil Code

According to Shimon Shetreet and Hiran E. Chodosh In theories of Multiculturalism the classical view of liberalism, this places individuals, and individual rights and freedom at its centre. When there will be conflict between group right and individual right if the human right violates then individual rights should protect. If the group right will be protect the individual right and right to development then the group right should protect. Thus human right approach has accepted.

International community fed up towards the politics of religion and State therefore the international community passed several conventions and made provisions of family protections. Some international conventions are as follows:

III) The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, together with Protocol Nos. 1, 4, 6, and 7, as amended by Protocol No. II.
VI) American Declaration of rights and Duties of Man, 1948.
XX) Copenhagen Declaration on Social Development, 1995.
XXIII) Private International law,

Above conventions can guide at the time of framing Uniform Civil Code.

Legislations which supporting to uniform civil code is as follows:

ii) The Special Marriage Act, 1954. (Defacto UCC)

Chapter IV
Judicial Approach to Uniform Civil Code.

Selected Ten cases have been discussed in this chapter. Those are as follows:

I) The State of Bombay Versus Narsu Appa Mali

AIR (39) 1952 Bombay 84 [C.N.16]

It challenges The Hindu Bigamous Marriages Act, 1946; on the ground that it violates Article 13, 14, 15 and 25. It also violates Section 494 of IPC.

The High Court of Bombay has decided that:


ii) Personal law is not included in the expression ‘law in force’ under Article 13 (1) of Indian Constitution.

iii) President of India has no right to pass the law in personal law under Article 372.

iv) State has power to legislate in personal matters either territorial or community wise.


(1985)2 SCC 556

This is a case for maintenance of divorce Muslim woman under section 125 of the criminal procedure Code. The Supreme Court of India has protected the Divorce Muslim women’s right of maintenance. The Supreme Court observed that Article 44 of Indian constitution remained as a dead. Court observed gap between personal laws can take place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case. Thus gender just judgment has given by the Supreme Court.

III) Denial Latifi and Another versus Union of India.

(2001) 7 SCC 740

In this case challenged the constitutional validity of the Muslim women (protection of Rights on Divorce) Act, 1986; on the ground that it violate Article 14, 15 and 21 of the Indian Constitution. The Supreme Court has declared that the impugned Act is valid.

IV) Noor Saba Khatoon versus Quasim.
It challenges section 125 of the Cr.P.C. on the ground that it is not applicable to the Muslim. The Supreme Court held the children of Muslim parents are entitled to grant of maintenance Under Section 125. Cr.P.C. for the period till they attain majority or able to maintain themselves; whichever date is earlier, or in the case of female children till they get married. Thus court has recognized the right of the children to claim maintenance from parents irrespective of religion.

V) Dr. Abdur Rahim Undre Versus Smt. Padma Abdur Rahim Undre AIR 1982 Bombay 341

This case is the case of conflict of law. It has challenged Divorce. The court has partially allowed the case. It shows the difficulties of conflict of law and Private International law.

VI) Ms. Jorden Diengdeh Versus S.S.Chopra (1985)3 SCC 62

This is the Case of conflict of personal law. Petitioner wanted to get divorce on the ground of irretrievable break down of marriage. But in Christian law the irretrievable break down of marriage and mutual consent are not ground for divorce. The Supreme Court has reminded the parliament to frame Uniform Civil code. In the matrimonial laws of marriage and divorce.

VII) Sarraja Mudgal Versus Union of India (1995) 3 SCC 635

This is the case of conflict of personal laws. There were cases of Bigamy wherein the husband was converted to Islam just to get second marriage legalized. The first wife were filed writ petition under Article 32 of the Indian Constitution. It prayed for declaring second marriage illegal and violation of section 494 of IPC. The issues involved in the case are as follows:

i) Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnize a second marriage.

ii) Whether such marriage without having the first marriage dissolved under law would be valid marriage?qua the first wife who continues to be a Hindu.

iii) Whether the apostate husband would be guilty of the offence under section 494 of Indian Penal Code.

The court held that

i) The second marriage of Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid.
ii) The second marriage is void.
iii) The apostate husband would be guilty of the offence under section 494 of IPC.

Thus the Supreme Court has shown their dissatisfaction about the government response to framing the uniform civil code.

**VIII) Ahmedabad Women Action Group (AWAG) and other Versus Union of India**

The write petitions were filed against the gender discrimination in Hindu law, Christian law, and Muslim law. Appex Court heared these petition in a group.

The supreme court of India expressed their view that the write petitions are not deserved to decide on merit. The Issue is of state policy. The remedy lies somewhere else and not by knocking at the door of the court. Hence the petitions were dismissed.

**IX) John Vallamatton and other versus Union of India.** AIR 2003 SC 1902

Section 118 of the Indian Succession Act, 1925 which challenges under Article 32 of the Indian Constitution on the ground it violates part III i.e. Fundamental Rights of Indian constitution. The Supreme Court held that section 118 of Indian Succession Act, 1925, declared unconstitutional and violates Article 13, 14, and 15 of constitution.

**X) Smt. Seema versus Ashwant Kumar** AIR 2006 SC 1158

The issue before the court was whether compulsory registration of marriages is required in the state.

The petitioners were argued that it prevent child marriages. It will prevent the marriages without the consent of parties is possible. It will check illegal bigamy/ polygamy. It will help to enabling married women to claim their right to live in the matrimonial house, maintenance rights and other benefits and privileges which they are entitled to after the death of their husband. It will be deterring to men from deserting women after marriage. It will be deterring to parents/ guardians from selling daughters / young girls to any person including a foreigner, under the garb of marriage. It is the duty of the state to get implement the international covenant on which India has signed.
The state argued it is not practicable in a vast country like India with its variety of customs, religions and level of literacy.

The Supreme Court held that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective states; where the marriage is solemnized. Thus the judiciary is always in favour of Uniform Civil Code in family laws.

Chapter V

Personal Interview on Family Law of India

The selected 16 learned person’s interviews have taken. They are given positive response to Uniform civil code.

1. Issue 1. Whether India should have a Uniform Civil Code?

The general response is if Uniform civil code is ever brought into effect it should be uniform to all its citizens, irrespective of their religion, caste, creed or tribe this is because it will help to protect all the citizens from injustices bestowed upon them by factors like religion caste etc.

2. Issue 2. Whether it is time to implement uniform civil code?

It is essential that Uniform Civil Code is implemented as early as possible. Within what time is not possible to be estimated. Before implementing the political leadership has to take careful consideration of many factors outside the law, including the sentiments of the communities involved. All personal law boards must be abolished before implementing uniform civil code.

3. Issue 3. Whether the uniform family laws should be codified into one composite piece like a code or whether to have separate legislative pieces, (ex. Uniform Marriage laws for all citizens of India, similarly for succession, maintenance etc.)

The plea for a uniform civil code basically means unifying all the Personal laws. This is because civil law and criminal law is already in the form of uniform law for all the citizens of India. Instead of keeping separate personal law for separate religions there should be one set of secular laws dealing with all domestic aspects- for example essentials of marriage, divorce, custody of
children, maintenance etc. Such law should be made applicable to all citizens of India regardless of the community to which they belong to. This will help India to move forward in its social growth also.

4. Issue 4. Whether the Code should contain Principles initially (like some western codes or international laws?)

The Code can contain basic principles as a preamble to the Uniform Civil Code: some of the basic principles can be as under:

a) The Uniform Civil Code is the set of civil laws that govern the residents of the Indian state of Goa. In India, as a whole, there is a religion-specific civil code that separately governs all Indians irrespective of religion, ethnicity or linguistic affiliation.

b) Uniform Civil code in India is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.

c) Uniform Civil Code will ensure Equality- to illustrate Principle of Gender Equality, etc.

5. Issue 5. Whether the present Family laws of India or at least some of them suffer from Gender Bias?

The Constitution had incorporated provisions to raise the status of women to one of equality whereas in practice it is still not achieved. After independence India has passed number of laws like the Dowry Prohibition Act, 1961. The Hindu Succession Act, 1956. The Muslim women (Protection of Rights on Divorce) Act, 1986. The commission of Sati (Prevention) Act, 1987. Protection of the Women from Domestic Violence Act, 2005. Etc. has been enacted but these laws are hardly implemented in their letter and spirit.

One can still see such bias with regard to Muslim Personal law- to illustrate is case of giving Divorce – it is easier for the man than the woman. Under the Hindu Laws one can see gender biasin case of adoption, succession, maintenance and also son preference over a girl child. In spite of ban on pre-natal sex examination the practice continues as many people in the rural area think that the girl child is a burden on the family.
6. Issue 6. Whether present family laws of India are insufficient to protect children?

An examination of family laws of India ranging from Hindu Marriage Act, Parsi marriage Act Etc. although are meant to protect interests of children they are neither child centered nor child friendly. This is clearly visible in marriage laws which do not grant legitimacy to children born out of void or illegal marriages.

Thus the interview response is positive to frame to uniform civil Code.

Chapter VI

Conclusion, Finding and Suggestions

The conclusion is also in favour of Uniform Civil Code.

Findings

i) Indian culture by and large is similar and cultural values are also same.

ii) Indian family laws are having large differences.

iii) Indian society is multicultural and Patriarchal

iv) The issues of gender just law either mixed with the religion or community culture. Therefore the main issue of gender justice left aside.

Suggestions

i) To take best from all existing personal laws in India. Take good from Internationallaw and socialist principles.

ii) Draft Uniform Civil Code and published it open for public suggestion.

iii) Education of gender justice in all levels of education.

iv) To make lobbies of the Supporters of Uniform civil code and co-ordinate and systematically start their work.
v) Gender just family law should get pass.

vi) Women should give equal opportunity in all field of social life.

vii) Frame strategy for implementation of Uniform civil code.

viii) Family court should established at every district all over India

ix) One composite Uniform Civil Code should get pass.

x) Give encouragement and support to the further research in this subject.

Scope for further research.

Any topic of Uniform Civil Code can take for further research. It can be a case study. It can be the comparative case study of different personal laws. Comparision of Indian personal law with international convention or with other countries personal laws.

Thus in evaluation of multiculturalism and gender equality in family laws of India from uniform civil code perspective It conclude that family reforms, whether community wise Hindu, Muslim, Christian, Parsi, Jewish or Tribal. Territorial like Asam, Arunachal Pradesh, Tamilnadu, Jammu and Kashmir, Rajasthan, Behar, Andaman and Nicobar etc. or region wise like South, North, East and West.

Subject wise matter: marriage; divorce, maintenance, succession and adoption etc. these piecemeal legislation steps towards the Uniform Civil Code.

These piecemeal legislations can be contradictory Sometimes it will give more rights to one gender and the other will suffer. If one subject like marriage will give more importance the other like divorce will suffer or vice versa. Therefore these family laws are intrinsically relied on one another therefore in multicultural society Uniform Civil Code is the formula and solution for gender justice. All subjectives and objective family laws should codify under one composite Uniform Civil Code is the best formula and solution according to liberal democratic model of Indian constitution.
Thus UCC will create benevolent individualism; it will support to the strong nationalism and create solid internationalism. In short it will be the law of “Vasudhevakutumbcom” It will become universal family law. It will be the best contribution to modern civilized World. After considering the past five thousand years history of India in general and modern History of India in particular the researcher believes India will translate the public policy of UCC in reality; in the interest of the humanism and human right.