



Equality and Justice : Examining the Uniform Civil Code from a Feminist Perspective

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ABSTRACT - The paper sets out to provide a comprehensive analysis of the feminist perspective on the uniform civil code, delving into its historical roots in India and its intersections with diverse personal laws. Furthermore, the paper seeks to meticulously examine how various stakeholders have strategically employed the uniform civil code as a tool for political leveraging. The paper's central focus is to intricately explore and elucidate the feminist viewpoint on the uniform civil code, offering a nuanced understanding of its implications for gender equality. Additionally, the paper has critically raised thought-provoking inquiries, including the potential efficacy of the uniform civil code in eradicating discrimination against women and the pragmatic challenges associated with its implementation in a multifaceted nation like India. Ultimately, the paper endeavours to present well-reasoned and practical recommendations aimed at the reasonable implementation of a uniform civil code.

Keywords: Equality, Justice, Law, Discrimination, Uniform Civil Code

Introduction – The paper aims to delve into the feminist perspective on the uniform civil code, exploring its historical context in India and its intersection with different personal laws. It also seeks to examine how the uniform civil code has been utilized as a political tool by various parties. The primary focus of the paper will be on the feminist viewpoint regarding the uniform civil code. Additionally, the paper raises important questions such as whether the implementation of the uniform civil code would eliminate discrimination against women and the feasibility of implementing it in a diverse country like India. Finally, the paper will propose suggestions regarding the implementation of a uniform civil code. The paper discusses the feminist perspective on the Uniform Civil Code (UCC). Before delving into the feminist viewpoint on the UCC, it's important to understand the concept of feminism.

The principle of feminism advocates for the equal political, economic, and social rights of all genders. While its origins lie in the Western world, feminist movements have since burgeoned globally, advocating for the attainment of equal rights. This movement has spawned various branches of feminism, such as Liberal feminism, rooted in classical liberalism from the late 18th century, which champions equal rights for both men and women,

giving rise to the suffrage movement and securing political and legal rights for women. Additionally, Radical feminism, emerging in the early 1960s, endeavours to deconstruct traditional patriarchal power structures and gender roles that perpetuate the oppression of women. Other schools of feminism also exist, such as Marxist feminism, which argues that capitalism is the primary cause of women's oppression. In contrast, socialist feminists believe that both patriarchy and capitalism contribute to the oppression of women.

This paper also examined the Uniform Civil Code (UCC), a proposal under Article 44 of the Directive Principles of State Policy. The UCC aims to replace India's diverse personal laws with a single set of laws governing marriage, divorce, inheritance, and adoption, regardless of an individual's religious or cultural background. Additionally, I have explored key articles of the Indian Constitution, specifically Articles 14, 15, and 25, which relate to equality and non-discrimination. By the end of this paper, I have analysed the debates surrounding the UCC and feminist perspectives on its implementation in a diverse country like India. We will consider whether the UCC can effectively eliminate discrimination against women, especially given that even after the implementation of the Hindu Code Bill in 1955, women still face oppression in areas such as marriage, inheritance, and divorce. Furthermore, I will investigate how the UCC might address the discrimination faced by women from marginalised communities.

To understand the historical context and current debates regarding feminist perspectives on the UCC, I have referenced various research papers. This paper has also highlighted the differences among personal laws and their discriminatory impacts on women.

LITERATURE REVIEWS

In her 2014 article, Nivedita Menon discusses how the debate surrounding the Uniform Civil Code (UCC) resurfaced following the BJP government's rise to power. She critiques the idea of majoritarian uniformity and addresses the concerns of minority religions. Menon also highlights how the UCC does not account for the rights of homosexual and heterosexual couples or women's property rights.

The article "Anveshi" (1998), written by multiple authors, critiques certain aspects of the women's movement, particularly its focus on legal reform. While it emphasizes the importance of legal engagement in achieving justice, it argues that personal laws derive their legitimacy from colonial state decisions and continue to exist as subjects of Indian law. In another piece, Tanja Herklotz (2016) examines Supreme Court rulings on the UCC and presents various feminist perspectives in India. Her main argument suggests that while personal laws across different religions have been harmonized, they remain formally distinct. She asserts that India is gradually realizing the essence of Article 44—uniformity and equality—through a step-by-step approach rather than a comprehensive legislative overhaul.

Saumya Umai (2022) focuses on comprehensive reforms within Hindu family law to advance women's equality and rights. Her paper explores constitutional and international human rights, advocating for inclusivity and feminist principles in discussions about family law reform in India. The central question of her article is whether Hindu family law adequately protects women's rights. Umai argues that creating a uniform family law for all

communities may only achieve formal equality, as it fails to address the inherent inequalities between men and women in marriage.

Siobhan Mullaly (2004) examines the complex interplay between gender equality, multiculturalism, and minority rights in India, suggesting that deliberative democracy can help navigate these tensions. She discusses the Shah Bano case of 1985 as an example. Mullaly argues that a deliberative democratic model and a dual-track approach—going beyond mere legal regulation of conflicting cultural claims—can support feminists in their goals.

Peter R. D'Souza (2015) addresses normative concerns, such as national consolidation, legal equality, and gender justice. He offers suggestions for improving women's conditions by reforming laws related to women and adopting a common civil code similar to that in Goa. Lakshmi Arya (2006) explores the validity of the UCC while also considering the broader role and identity of women in Indian society. She argues that women should have agency over their lives to resist community structures, which is a prerequisite for meaningful personal law reforms.

When comparing these articles, it becomes apparent that certain important issues were overlooked by feminist writers. For example, there was little discussion about how tribal communities would be included in the UCC, given their distinct cultural practices. Although Menon mentions the need for the UCC to address the rights of homosexual and heterosexual couples, there was no comprehensive examination of how the LGBTIQ community would be incorporated.

Additionally, feminist perspectives on the UCC largely reflect the views of upper-class and upper-caste individuals, often neglecting the voices of women from lower socio-economic backgrounds. India also has matrilineal societies, and there was no mention of how the UCC would cater to their unique practices. The diversity of opinions among feminists regarding the UCC further complicates the discourse, indicating that there is no uniform feminist stance on its implementation.

OBJECTIVE AND RESEARCH QUESTIONS:

The paper aims to explore the feminist viewpoint on the Uniform Civil Code (UCC), providing a comprehensive history of the UCC in India and its impact on the lives of Indian women. The primary research question revolves around the feminist perspective on the UCC, assessing Indian feminists' opinions on its implementation. This research has revealed varying viewpoints among feminists, both in support of and against the UCC. The paper also delves into secondary questions, such as the feasibility of implementing a uniform civil code in a diverse country like India, its potential to eliminate discrimination against women, and its implications for women from marginalized communities.

METHODOLOGY:

I have chosen to focus my research on the Feminist Perspective on the Uniform Civil Code, examining the various debates surrounding the UCC through a feminist lens and delving into its historical origins. I gathered data from research papers and newspaper articles, exclusively using secondary sources. My approach in this paper is analytical and critical. I aimed to analyze how personal laws perpetuate discrimination against women, and ultimately, to critically examine the impact of these laws on women's rights and opportunities, taking an

intersectional approach. Reading research articles provided detailed information about my topic, allowing me to formulate my research question and arguments, identify loopholes, and conduct a thorough literature review. My research paper is entirely based on the qualitative method.

ANALYSIS:

Feminism advocates for the social, economic, and political equality of women. There are various schools of thought within feminism. For instance, liberal feminism emphasizes equal rights for women, advocating for their political and legal rights. In contrast, radical feminism views patriarchy as the primary cause of women's oppression, while Marxist feminism attributes this oppression to capitalism.

The feminist movement has evolved through three waves. With a basic understanding of feminism established, we can now turn to the topic of the Uniform Civil Code (UCC). The UCC, proposed under Article 44 of the Directive Principles of State Policy (DPSP), aims to replace India's diverse personal laws with a single set of laws governing marriage, divorce, inheritance, and adoption, regardless of an individual's religious or cultural background.

The debate over the UCC dates back to the British colonial period. The Lex Loci report of 1840 called for the codification of laws related to crimes, evidence, and contracts while excluding personal laws from such codification. During this time, Hindu laws were often prioritized, and there was a lack of uniformity in Muslim personal laws. Hindu customary laws were particularly discriminatory towards women, depriving them of rights related to inheritance, remarriage, and divorce. This led to the introduction of the Hindu Code Bill, which resulted in important legislation such as the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoption and Maintenance Act of 1956. However, these laws represented a diluted version of what Article 44 intended.

The Special Marriage Act of 1954 provides a legal framework for marriages between individuals of different religions and castes, although it does not apply in Jammu and Kashmir. Under this act, polygamy is illegal, and matters of inheritance and succession are governed by the Indian Succession Act rather than personal laws.

A significant case in the context of personal laws is the Shah Bano case of 1985. This case involved Shah Bano, a Muslim woman seeking maintenance from her husband after divorce. The Supreme Court ruled in her favour, raising important questions about Muslim personal laws and women's entitlement to alimony under Indian law. However, the Indian government subsequently passed laws that limited the court's jurisdiction in such matters, leading to ongoing debates about the rights of Muslim women in India.

Proponents of the UCC argue that it would promote national integration, modernity, secularism, and, more recently, gender equality. Political parties like the BJP included the UCC in their election manifestos in both 1998 and 2019. However, the UCC has often been viewed as a political tool used by the Hindu majority to portray Muslim personal laws as backward and to liberate Muslim women from perceived discrimination. Nivedita Menon (2014) points out that some Muslim personal laws can be more empowering than their Hindu counterparts. For instance, Muslim marriage is often viewed as a contract that provides better protection for women in divorce situations, while Hindu marriage is seen as a sacrament. Additionally, Muslim inheritance laws tend to offer better

protections for women's rights, and the Mehr (bride price) is considered the exclusive property of the wife. Moreover, a Muslim man who takes multiple wives is legally obligated to support all of them, whereas Hindu men in polygamous relationships historically escaped similar responsibilities—though this is now illegal under the Hindu Marriage Act of 1955.

Feminist pioneers like Hansa Mehta, Minoo Masani, and Rajkumari Amrit Kaur argued that personal laws hinder India's progress. On the other hand, Flavia Agnes critiques the UCC for potentially infringing upon the personal laws of various religious communities. The UCC may also contradict Articles 14, 15, and 25 of the Indian Constitution. Articles 14 and 15 ensure equality before the law and prohibit discrimination based on race, gender, or caste, while Article 25 guarantees religious freedom. Therefore, implementing the UCC could restrict the religious freedoms of different communities, raising important questions about women's rights as well.

Some have suggested that the civil code in Goa, which has its own unique provisions, could serve as a model for the rest of the country. However, even within Goa's civil code, there are notable differences that complicate its broader application. As a result, feminist perspectives on the UCC are diverse and complex. After independence, many feminists supported the UCC, but by the 1990s, views shifted as it began to be perceived as imposing Hindu laws and serving as a tool for vote-bank politics.

CONCLUSION:

As we know the debate on UCC is very complicated and it is also difficult to implement UCC in a country like India which is so diverse. Feminists in India were in favour of UCC after independence and they wanted the personal laws to be replaced by UCC as it would grant women equal rights. But after the 1990s their demand for UCC declined as it became merely a political tool for political parties and it tried to impose Hindu laws on all religious communities. The debate on UCC is more complicated because it contradicts the articles of our constitution as articles 14 and 15 of the Indian constitution say equality before the law and no person should be discriminated against based on gender, race, religion and place of birth on the other hand article 25 of Indian constitution talks about religious freedom so a lot of feminist argues that if UCC will be implemented it will curtail the religious freedom and some feminist raise question on the ground of individual freedom. This debate makes the implementation of UCC even more complicated there is a Delhi-based women's organisation named "Saheli" that says that rather than giving uniform laws we should focus on uniform rights which could be an alternative to UCC.

Implementation of UCC is a difficult process in India because there are so many different personal and customary laws so rather than implementing UCC the personal laws of all religious communities should be reformed and made gender-just. Before implementing UCC we need to look into the fact that women have agency over themselves which can be done through various government policies. We have to look into alternatives through which women of different communities can enjoy both their religion as well as their freedom. The feminist who favours UCC gave the arguments that it gives equality and gender justice, freedom of choice and promotes secularism. The feminist who criticises UCC say that it is against the cultural practices of different religions, there will be state interference and it is difficult to implement UCC in India because of its diverse culture. The feminist in India has different views regarding the implementation of UCC both in favour and against but their common

aim is to bring equal rights for women in marriage, inheritance divorce etc. The debate on UCC is still going on in India and there is no solution to it because now UCC is used as a political tool to gain votes. At last, I would say that there are no uniform views of feminists regarding the implementation of UCC. The feminist perspective on UCC is an ongoing process that is still in debate and discussion.

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