

## **Uniform Civil Code: An Analysis Of Its Merits And Demerits**

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**Abstract**

*Religion being the core value in India, it is impossible to separate religion from the lives of people. There is a right to practice one's own religion but the state can regulate this right to prevent any discrimination and oppression. There have been talks since the making of the Constitution of India that there is a need for a Uniform Civil Code which will regulate the matters of personal laws of all religions. It has always been considered a difficult task to do owing to the diversity of religions and cultures in the country. But since the existence of different personal laws has given birth to many social issues like inequality and has been a hindrance to the national integrity of the country, there have been strong voices in favor of formulating a Uniform Civil code that will bring uniformity in all personal laws. . The researcher in this article has tried to understand the past, present and future of the discussion on Uniform Civil Code and analyze its merits and demerits.*

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## **Introduction**

The term Uniform Civil Code implies the same set of secular civil laws to govern all peoples irrespective of their Religion, Caste and tribe. The Code will deal with matters related to marriage, divorce, adoption, succession and inheritance. Article 44 of the Constitution of India gives a directive to State on this. Even though it is a non-enforceable directive but it does reduce the importance of such directives. This was included just as a directive and not as an express law because of the nature of Indian society. India is a diverse country, in terms of religions and cultures. This diversity makes India a unique country with the principle of unity in diversity. But it also comes with many difficulties. Various religions and cultures also follow different customs and traditions. They have their own personal laws which are evidently different from the personal laws of another religion. This has led to many social evils like polygamy, triple talaq, and ambiguity in inheritance laws. The progressive, as well as women's movements, had seen the UCC as an important means to achieve secular, progressive and non-discriminatory personal laws in India. The judiciary in India has made several attempts to discuss the possibility of enactment of a Uniform Civil Code for entire nation. But these have only been a discussion and suggestions. The government has also not made any concrete attempts in this regard.

## **Meaning**

The expression "Uniform Civil Code" as used in Article 44 consists of three terms- 'Uniform', 'Civil' and 'Code'. The word 'Uniform' means, being the same in all the circumstances. The word 'Civil' refers to civil law relating to the private law of citizens in relation to each other. Civil Law would relate to various aspects of personal relations such as, contracts, property, marriage and inheritance.<sup>1</sup> 'Code' means compilation of concise form of all general statutes i.e. different laws and rules are out in one place in a comprehensive form. The word 'Civil Code', when used with 'Uniform', means a code that shall be uniformly applicable to all citizens irrespective of their religion, caste, or sex. The same rules, which are codified, will be applicable to all the people even though they belong to different communities. The idea of UCC was introduced into the national political debate in 1940 when a demand for such a code was made by the National Planning Committee appointed by the Congress.

## **International Aspect**

Israel, Japan, France and Russia are strong today because of their sense of oneness which we have yet to develop and propagate. Virtually all countries have uniform civil codes or for that matter uniform laws- civil or criminal. The European

nations and U.S. have a secular law that applies equally and uniformly to all citizens irrespective of their religion. The Islamic countries have a uniform law based on shariah which applies to all individuals irrespective of their religion.<sup>2</sup>

### **Constitutional Aspect**

Under Part IV of the Constitution, Article 44 states that “the state shall endeavor to enact a Uniform Civil Code for citizens throughout the country”. The Part IV of the Constitution embodies Directive Principles of State Policies which are the directives to the State that would act as guiding principles in the administration of the State. These are not enforceable principles. The directive under the Constitution has till now not been followed and there has not been a codification of a uniform law on all the personal matters which are governed by the customs and traditions of one’s religion.

### **Historical Background**

The clause on Uniform Civil Code was debated a lot in the Constituent Assembly on the question that whether an express provision should be included about it as a fundamental right or as a directive principle of state policy. That is, it should be made a right protected by State or a mere unjustifiable directive.

The issue was settled by a majority vote of 5:4 where it was decided that making a UCC was not within the scope of fundamental rights.

Two objections were put forward in the Constituent Assembly against the making of a UCC applying throughout India:

1. It would infringe on the fundamental right to freedom of religion mentioned in Article 25, and
2. It would be a tyranny to the minority.

The first objection is not correct. The directive contained in Article 44 is not at all against the freedom of religion guaranteed by Article 25. Clause (2) of Article 25 saves secular activities associated with religious practices if they are intended for social reform. K.M. Munshi, a member of the Assembly rejected this notion against UCC. He said it matters related to inheritance, succession, etc. those which are secular in nature if they are seen as a part of the religion then many oppressive and discriminatory practices of personal laws against women could never be done away with. In the opinion of Dr. B.R. Ambedkar, even though the UCC is important, it should remain voluntary in the initial stage, and it would be left to the legislature to make it mandatory in the future.

As regards the second objection that the enactment of UCC would be tyrannical to the minority, K.M. Munshi gave example of the Muslim community in

Egypt or Turkey. He said that nowhere in advanced Muslim countries the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a Civil Code. No minority is given priority to the national laws of the country.

There were no active steps taken for the enactment of a UCC except that codification of Hindu Law was undertaken soon after the commencement of the Constitution. But from regular intervals, this matter was dealt with by the judiciary of India through various cases.

### **Judicial Pronouncements**

One of the first and most important judgments pronounced by the Supreme Court of India in regard to the Uniform Civil Code was in *Mohd. Ahmed Khan v. Shah Bano Begum*<sup>3</sup>, where Shah Bano filed a petition in court demanding maintenance from her divorced husband Mohammed Ahmad Khan. Shah Bano's claim was premised under Section 123 of the Code of Criminal Procedure, 1973, which stipulates that a man will have to provide for his wife during the marriage and after divorce, if she cannot sustain herself financially on her own. However, Khan contested the claim on the grounds that the Muslim Personal Law limited the payment of maintenance till only the period of iddat.

The Supreme Court of India upheld the decision of the High Court that ordered the payment of maintenance to Shah Bano. The then Chief Justice Y.V. Chandrachud said that the moral edict of Section 125 was to provide a quick and summary remedy to a class of persons who are unable to maintain themselves and that morality cannot be clubbed with religion. The Shah Bano case was a landmark judgment as it showed the progressive character of Muslim women and other sections of Muslim society while highlighting their plight and challenging religious orthodoxy.

But the protest of Muslim clergy led to the passage of The Muslim Women (Protection of Rights on Divorce) Act, 1986, nullifying the Supreme Court order. The act stipulated maintenance to a divorced woman only during the period of iddat, or till 90 days after the divorce, according to the provisions of Islamic law.<sup>4</sup>

The Supreme Court while deciding the case, advised the central government to enact a Uniform Civil Code which will help the cause of national integration by removing disparate loyalties to laws that have contrasting ideologies. Outlook

A decade later in another case of *Sarla Mudgal, President, Kalyani and Others v Union of India and Others*<sup>5</sup>, the apex court urged the government to come up with Uniform Civil Code once again was a question of Hindu men leaving their wives and converting themselves to Muslim religion to marry the second time. The validity of the such second marriage was questioned.

Then in the case of Lily Thomas, Etc v Union of India and Others<sup>6</sup>, the apex court clarified that it cannot direct the center to formulate a law on Uniform Civil Code. But later in John Vallamattom and Another v Union of India<sup>7</sup>, “We would like to State that Article 44 provides that the State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”

In ShayaraBano v. Union of India<sup>8</sup>, the question of the validity of Talaq-e-Biddat was challenged in the Supreme Court. While deciding the case, the court gave several observations on forming of the Uniform Civil Code. They were-

“It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”

“The desirability of uniform Code can hardly be doubted. But it can concretize only when the social climate is properly built up by the elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change”

“Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other 157 cultures. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.”<sup>9</sup>

### **Means to Secularism**

The Preamble of the Constitution declares India to be a secular state. This means that the state has no religion of its own. It will not compel its people to follow a particular religion and every person in the country will have the freedom to practice and propagate its own religion. A Uniform Civil Code is a positive step towards achieving this goal of secularism. As there is diversity of religion and ethnicity, the state has responsibility to ensure that principles of secularism are followed and Uniform Civil Code is like a medium through which it can be achieved.

### **Why do we need it?**

The need of implementing a Uniform Civil Code was felt soon after the commencement of the Constitution. The Uniform Civil Code will be helpful in removing the particularistic and reactionary aspects of personal laws of various religious communities. The objective thus is to bring social reform and uplift the status of women. The Uniform Civil Code is eminently desirable in the interest of the modernization of society and for a common system of justice for all. The absence of a uniform code has created many problems. For instance, in the matter of marriages, Hindu Law expressly prohibits polygamy and in Muslim Law, it is allowed. So, while a Hindu man cannot marry twice but a Muslim man can have four wives. This creates ambiguity in a society where people living in the same country have different laws for them. This has led to the Hindu men converting to Islam to just getting married again.

If a UCC is really about “uniformity,” it will remove the requirement of religious ceremonies for the validity of marriages, abolish the concept of coparcenary property, and remove all distinctions between converts and non-converts over the inheritance of property. If uniformity in all respects is not desirable, then that is an acknowledgment of the folly of promoting a UCC without understanding the specifics of what it entails. If the goal is to address inequities in personal laws of different religions, such inequities must be addressed on their own terms instead of demanding adherence to a UCC.<sup>10</sup>

### **Arguments in Favor**

Arguments which are given in favor of the enactment of the Uniform Civil Code are-

- i. Promotes Secularism-** The Uniform Civil Code means all people of India will follow the same law in the matters of personal laws. It means not one religion will prevail. The secularism declared in the preamble will come into practice in the true sense. A uniform civil code doesn't mean it will limit the freedom of people to follow their religion, it just means that every person will be treated the same. That's real secularism.
- ii. Uniformity in-laws-** A uniform civil code means that all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs. All the people will come under one common law which will be implemented by them irrespective of their religion, community or customs. This will bring uniformity in personal law matters and it will be easier to maintain order in society and decide cases in disputes.

- iii. More clarity in laws-** The laws which are not codified and are still followed on the basis of customs will be written on paper. For instance, in Muslim personal law, the rules are uncodified and are followed mainly by the customs and traditions and thus they are dependent on different interpretations of different people. This often leads to misuse by the people. Codification of these laws together with other laws will bring more clarity to laws and thus easier to implement.
- iv. Brings equality-** Right now we have personal laws based on particular religions, which means that while Muslims can marry multiple times in India, a Hindu or a Christian will be prosecuted for doing the same. This is not like equality guaranteed by Article 14 of the Constitution of India. All the laws related to marriage, inheritance, family, land, etc. should be equal for all Indians. This is the only way to ensure that all Indians are treated the same.
- v. Secure rights of women-** A Uniform Civil Code will definitely improve the conditions of women in society. Due to the patriarchal and misogynistic society, if we apply age-old customs and practices. Women will be subjected to discrimination and subjugation. With the development of society, the status and needs of women have changed, they are now independent beings and so their independence should be respected. Those practices derogatory to women should be removed and the making of a Uniform Civil Code will make women governed by progressive and reformative laws.

#### **Arguments Against It**

Many arguments are put against the implementation of a Uniform Civil Code-

- i. Against freedom of religion-**The major argument against the enactment of the Uniform Civil Code is that it will curtail the freedom of religion guaranteed by the Constitution. If the rules of personal laws will be codified and made compulsory to be followed, then the freedom of religion will be reduced. The practices once allowed by their religion, will be no longer available to them.
- ii. Diversity of India-** India is a diverse country with different religions, cultures, languages, and customs in different communities and states. Every such religion and culture has its own practices which are very different from each other. So to bring together all these practices under one umbrella and make one uniform code applicable to all is a cumbersome and difficult task.

- iii. **State interference-** It may seem that bringing a uniform code will amount to excessive interference of the State in personal matters of people. This interference is not appreciated by the people of different communities. Muslims will say that Sharia is an integral part of Islam, it is made by god, so no law can intervene in it and implementation of the Uniform Civil Code will amount to depriving Muslims of their personal laws.
- iv. **Communities reluctant-** The people from different communities are reluctant to adopt such secular laws against the personal laws. So, it is not a good practice to impose the traditions and customs of one religion on a different religion.

### **Law Commission Report**

The Law Commission of India has opined that a Uniform Civil Code (UCC) is not required to reconcile conflicts in personal/family laws with the Indian Constitution.

In a consultation paper on the Reform of Family Law, the Commission has observed,

“Resolution of this conflict does not mean the abolition of difference. This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy.”<sup>11</sup>

Therefore, the Commission has suggested amendments to existing family laws to tackle discrimination and inequality in personal laws, rather than do away with differences between them altogether. It has also suggested the codification of certain aspects of personal laws to limit the ambiguity in the interpretation and application of these personal laws.

Deliberate emphasis has been placed on moving towards laws that are gender-neutral and which are less discriminatory towards illegitimate children.

The Commission has reserved its recommendations in certain relevant areas such as the patriarchal undertones of adultery law, Muslim polygamy and certain aspects of Parsi divorce, given that they are currently sub judice before the Supreme Court.<sup>12</sup>

### **Latest Developments**

In response to PILs filed in Supreme Court seeking Uniform Civil Code in the country, the Central Government has said that they recognize that there is a



constitutional obligation on this matter. But the person of different communities and religions following different matrimonial and property laws is a symbol of national unity. The entire informed the court that the matter of the Uniform Civil Code has been referred to the 22<sup>nd</sup> Law Commission for its recommendations.

### **Conclusion**

Religion plays an important part in our lives. So the right to practice and propagate one's own religion is important too. But if this religion becomes a tool of oppression then laws can be made to regulate it. Uniform Civil Code is such a law. Even though the Constitution of India directs its making, still the governments still date are reluctant to formulate it because of reasons which are political and practical too. It is a herculean task to make such a law that would contain practices from all personal laws in a balanced manner but it is not impossible too. The State of Goa which is the only state where the Uniform Civil Code is enacted is an example. The government needs to take a bold step forward and prepare a code keeping in mind the interests of all religious communities and by taking their suggestion. It would be a revolutionary step in the history of India and revolutionary in the realm of the rights of women and children too.

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