

## Pros and Cons of Uniform Civil Code in Diverse Society of India

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### **Abstract**

*The Article 44 of the constitution of India states that, “The State shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India”. Dr. B R Ambedkar, the father of the Indian Constitution, has kept the Uniform Civil Code in the directive principle of state policy because while drafting the constitution, he said that, “A Uniform Civil Code is desirable but for the moment it should remain voluntary.” He was in the favor of the Uniform Civil Code but due to the opposition from religious fundamentals, the UCC become part of the directive principle of state policy.*

*After the Shah Bano’s case the Supreme Court also directed the parliament to frame the Uniform Civil Code, but till now the Uniform Civil Code has not been framed by the parliament. However, the government of Uttarakhand has started drafting the Uniform Civil Code. The Goa is the first state to frame the Civil Code under the name Goa Civil Code. This code was first named as the Portuguese Civil Code.*

*In the diverse society of India, there is a need for UCC which can promote the national integration and gender justice, equality and dignity of women. In this article, you will have that what is the need for a Uniform Civil Code in the diverse society of India.*

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### **Uniform Civil Code-Definition**

A uniform civil code is needed to replace the personal laws which are based on the different scriptures and customs of every religious community, especially for Hindus and Muslims which cover the laws related to property, marriage and divorce, inheritance and succession. There is a need for such a code or rule for every citizen of India, which does not have any relation with any religion. It means that all the sections of the diverse society of India irrespective of their religion will be treated equally, which cover the area such as marriage, divorce, maintenance, inheritance, adoption and succession of the property.

Part IV, Article 44 of the constitution of India states that “The State shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India”. In Article 37 of the constitution of India states that “The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

### **Historical Perspective of Uniform Civil Code**

The debate over the Uniform Civil Code starts from the colonial era to the post-colonial era. It is a most important topic for debate after the petition was filled in 2019. According to The Lex Loci report of October 1840, it was focused on the necessity of uniformity in the codification of Indian law, which is related to the crimes, evidence and contract. But in this report the personal laws of Hindus and Muslims are kept outside. In the Queen’s 1859 proclamation, it was promised for non-interference in religious matters.

During the drafting of the constitution, the leaders like Dr. B.R. Ambedkar were in the favor of the Uniform Civil Code, they included the Uniform Civil Code in the Directive Principles of State Policy due to the opposition from the religious fundamentals.

The Hindu code bill was drafted by the Dr. B.R. Ambedkar to reform the Hindu laws, which included legalized divorce, opposed polygamy, and gave rights of inheritance to daughters. This bill was passed via four different laws.

1. The Hindu Succession Act, 1956
2. The Hindu Marriage Act, 1955
3. The Hindu Minority and Guardianship Act, 1956
4. The Hindu Adoptions and Maintenance Act, 1956

### **What is the need for the Uniform Civil Code?**

The different personal laws promote communalism which leads to discrimination against the people who belong to the different religions. It was the Shah Bano Case in 1985 in which the Supreme Court first directed to the parliament to frame the Uniform Civil Code and also declared the practice of triple talaq as unconstitutional. The uniform civil code promotes the real secularism and also improves the condition of the women by providing them the more rights. The uniform civil code is based on the concept that there is no connection necessarily between religions and personal laws in any civilized society. There should be the same marriage, family and land-related laws. It will provide the rights of equality and justice in the courts of law to every woman irrespective of the religion.

Some of the arguments that are in favor of a uniform civil code are as follows:

1. It will integrate India: Under this, it will help bring every citizen of India under one national civil code despite his caste, religion or tribe.
2. It will reduce the vote bank politics: During the elections, every party is involved in the vote bank politics. So the uniform civil code will help in reducing the vote bank politics.
3. Becoming a developed nation: The Uniform Civil Code will help the society to move forward and make India a developed country.
4. It improves the condition of women: The uniform civil code will provide the various rights to the women to improve their conditions.
5. It will promote the real secularism: The uniform civil code will provide the equal treatment to all the people, but it does not mean that it will take the freedom of people to follow their religion.

The misunderstanding in the people about the Uniform Civil Code is that it is against to the Muslims, but in reality it ensures the unity and harmony between Hindus and Muslims. According to the Mr. Athawale, a Dalit leader from Maharashtra, "This is false propaganda being spread by the opposition. The UCC is needed to ensure unity and harmony between Hindus and Muslims. Even BR Ambedkar, the architect of our constitution, was in favor of UCC."<sup>1</sup> He further added that, "I want to tell Muslims that the UCC is not against you. Instead of doing politics over it, all political parties should support it. Not all tribals are against it. This law is not against tribals or dalitis or Hindus or Muslims. It is very important to bring in the UCC."

Some of the constitutional provisions which will not be affected after the Uniform Civil Code are as follows:

1. Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
2. Article 25- Freedom of conscience and free profession, practice and propagation of religion.
3. Article 25(2) - Provides for regulating secular activities associated with religious practices, social welfare and reform.
4. Article 26- Freedom to manage religious affairs.
5. Article 27- Freedom as to payment of taxes for the promotion of any particular religion.
6. Article 28- Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

### **The intervention of the Judiciary in favor of Uniform Civil Code**

- **Shah Bano Case<sup>2</sup> (1985)**

This was a historical case, where the Supreme Court brought the need for a uniform civil code and directed to the parliament to frame the uniform civil code. In this case, a 73-year-old lady named as Shah Bano where given a divorce after using the triple talaq and also denied for the maintenance. She went to the district court and high court, and the district court and high court were in her favor. The husband went to the Supreme Court saying that he had fulfilled all his obligations under Islamic law. The Supreme Court held that under the provision (section 125) maintenance of wives, children and parents applies to all citizens irrespective of religion. The Supreme Court has given instructions, to the government, to frame the uniform civil code and declare the practice of triple talaq as unconstitutional.

After this decision, the discussion and meetings were held and the government has decided to pass The Muslim Women's (Right to Protection on Divorce) Act (MWA) in 1986, which made section 125 of the criminal procedure code inapplicable to Muslim Women.

- **Daniel Latifi Case<sup>3</sup>**

Under this case, the Muslim Women's Act was challenged because it violated the right to equality and the right to life. The Supreme Court while holding the law as constitutional harmonized it with section 125 of CrPC and held that the amount received by a wife during the iddat period should be as large as that she can maintain herself. According to the law, the divorced Muslim Women is eligible for the provision of maintenance, lifetime or to the period of re-marriage.

- **Sarla Mudgal Case<sup>4</sup>**

The question was arising in this case that under the Hindu law, whether the Hindu husband embracing Islam can solemnize the second marriage. The court held that the Hindu marriage can be solemnized under the Hindu law and can be dissolved according to the grounds given under the Hindu Marriage Act 1955. The Hindu marriage cannot be dissolved by itself on conversion to Islam and marrying again. The second marriage solemnized after converting to the Islam, is an offense under section 494 of the Indian Penal Code.

- **John Vallamattom Case<sup>5</sup>**

In this case the John Vallamattom, a priest from Kerala, challenged the constitutional validity of the section 118 of the Indian Succession Act, this section applies to non-Hindus in India. According to him the section 118 of the Indian Succession Act was a discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench declared it unconstitutional.

#### **Merits of Uniform Civil Code**

1. The country will rise with new power and force after defeating the communal force.
2. It will provide the women, the right to equality and liberty and will provide the relief from the patriarchal domination.
3. It will simplify the laws, and provide the justice too fast.
4. It will help in the unity and integration of the nation.
5. It will protect the weaker section of the society.

#### **Demerits of the Uniform Civil Code**

1. A lot of constitutional challenges are attached to it, such as the conflict between freedom of religion and with right to equality.
2. It is a great fear of uniformity in the minorities, that their culture will be suppressed by the culture of majorities.
3. It is the biggest challenge of uniformity in the diverse society of the country.

#### **Goa Civil Code: As an example**

The first Indian state to have a Uniform Civil Code in the form of common family law is only Goa in India. Before its liberation, this code was named as Portuguese Civil Code, introduced in the 19<sup>th</sup> century. This Portuguese Civil Code remains the same today in the force under the name Goa Civil Code.

There are some features regarding the Goa Civil Code, which are as follows:

1. The Civil Code of Goa provides the equal division between the husband and wife and also between the children, regarding the income and property.
2. There must be compulsory registration of the birth, marriage and death, and there are a lot of provisions for divorce.
3. The Muslims are restricted from practicing the polygamy or divorce through triple talaq.
4. All the property and wealth owned by the spouse during the course of marriage is commonly held by the couple.
5. In case of divorce, the property will be given equally to each spouse.
6. In case of death, the ownership of the property is halved for the surviving member.
7. The children cannot be denied completely from their ancestral property. At least half of the property should be transferred to the children, but this will be shared equally among the children.
8. The Hindu men have a right to bigamy under some circumstances, i.e., if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30, have a right to bigamy. The law prohibits polygamy in other communities.

The Goa Civil Code is not a Uniform Civil Code but it can be an example of the Uniform Civil Code. Though, it helps a lot to the government to make the Uniform Civil Code.

#### **Challenges for Implementing the Uniform Civil Code**

- This civil code makes it challenging to control the interests and sentiments of the vast range of the communities.
- It is very challenging to remove the doubt from the minds of minorities as they think that it is a process to make them a Hindus.
- There is a lack of political will due to the complexity and sensitivity of the issue.
- There is a great challenge to improve the condition of the women through this civil code, as there is no change in the percentage of property or not even in their condition after the Hindu Inheritance Act.
- The great challenge is that the different communities have their own personal laws.

#### **Suggestion to Implement the Uniform Civil Code**

- To understand the concept of the Uniform Civil Code, there is a need for a progressive and broadminded outlook, and this can be possible only after the education, awareness and sensitization programs.

- It must work for the interest of all the religions or communities.
- There should be a committee of eminent jurists to take care to not to hurt the sentiments of any community.
- In the matter of being sensitive in nature, it will be better that the initiative should come from the related religious groups.

### **Conclusion**

The Uniform Civil Code is a most debated topic in India, and this has been more debated since the first petition, which was filed in 2019 for framing the Uniform Civil Code. The Uniform Civil Code is a great need of today's diverse society of India to promote national integration and gender justice, equality and dignity of women. As Dr. B R Ambedkar said while drafting the constitution that, "A Uniform Civil Code is desirable but for the moment it should remain voluntary."<sup>6</sup>The Jawaharlal Nehru, the first Prime Minister of India, has avoided the Uniform Civil Code because at that time the Muslim community was not ready<sup>7</sup>.

The Supreme Court of India in 1985 first directed to the parliament to frame the Uniform Civil Code in the Shah Bano case. The Supreme Court revisits UCC debate after 38 years of Shah Bano's Rs.20 per month alimony judgment<sup>8</sup>.

India is a country where the different communities have their personal laws, which are affecting the judiciary process or even national integration. In India there is a diversity in the society of India, because there is no gender justice, equality and dignity of women. The society of India is based on the patriarchal, and there is a need to relieve the society from the patriarchal domination.

The Minority communities are afraid of the Uniform Civil Code that there is a process to impose the rules and regulations of the majority community over the minority community, and also think that the rights provided by the constitution to them, will be removed after the Uniform Civil Code. It is quite clear that the Uniform Civil Code will not affect the rights provided by the Constitution to the minorities. Even it will help in national integration and gender justice, equality and dignity of women. It will help the country to rise with new force and power after defeating the communal force. It will simplify the law and provide the justice too fast. Even it will protect the weaker section.

After comparing the merits of the Uniform Civil Code with the demerits of the Uniform Civil Code, we found that there is a need for the Uniform Civil Code in the diverse society of India. However, the Supreme Court is recommended to frame the Uniform Civil Code from the Shah Bano Case. But till now the Uniform Civil Code has not been framed by the government. The government of the BJP party has

considered over the UCC and the Department of Legal Affairs has taken the suggestions from the different communities before drafting the Uniform Civil Code. The 22<sup>nd</sup> Law Commission of India has sought for the suggestion on the UCC but the 21<sup>st</sup> Law Commission of India has said that the Uniform Civil Code is not necessary and also not desirable at this stage in the Country<sup>9</sup>.

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