



Secularism v/s Uniform Civil Code and its Problems and Prospects

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ABSTRACT

There has been much debate in recent times on the topic of Uniform Civil Code. It is to be taken into consideration that the compartmentalization of law and the genesis of our country's legislative literature can be traced back to the colonial era. Before heading deep into the concept of uniform civil code, it is noteworthy to take into knowledge, the meaning of the term 'Uniform Civil Code'. The practices it includes are the uniformity in-laws of marriage, divorce, succession, adoption, guardianship, and partition of land and assets to all citizens without any discrimination. The other aspect of proposing UCC is to protect the rights of women of different religions in India.

Key Words: Uniform Civil Code, Customs, Religions, Cast, Muslim Law, Hindu Law

INTRODUCTION

Uniform Civil Code is observed as the same set of secular civil laws so as to govern all people irrespective of their religion, caste and tribe. The need for such a code was felt to take into account the constitutional mandate of securing justice and equality for all its citizens.¹In simple words, Uniform Civil Code was defined as a proposal in which the personal laws of the country should be replaced on the basis of the scriptures and customs of each major religious community in India with a common set governing every citizen.²

The Uniform Civil Code (UCC) is a vision to contribute to a uniformly structured legislature that will reserve all the aspects revolving around the personal religious and civil laws of every religion in India. The UCC will grant uniform personal laws to every religion to attain secularism and will override personal laws of different religions, races, caste, etc.

CONCEPT OF UNIFORM CIVIL CODE

It is to be noted that uniform civil code which is in toto in itself the sense of 'uniformity' which is to be brought in the secular state and the applicability of such code extends to all the citizens irrespective of their religion, caste and tribe.

After being applicable to all, such a code becomes futile pertaining to our personal laws whether it is Hindu law, Muslim law or any other personal law in which the issues related to marriage, divorce, succession, inheritance, adoption and other family matters.³ There is multiplicity of family laws in India and they have their own personal laws like the Hindus have their Hindu law (Hindu Marriage Act, 1955), Muslims have their Muslim law, Christians have their Christians Marriage Act, 1872, the Indian Divorce Act, 1869, the Jews have their unmodified customary marriage law, Parsis have their own Parsi marriage and Divorce Act, 1936 and other laws.⁴

It is seen personally so far that each person carries his own law wherever he goes in India. The personal laws vary widely on the basis of their sources, philosophy and application. Therefore, an inherent difficulty and resistance is seen so as to bringing people together and to unite them when they are governed by different religions and personal laws.⁵

UNIFORM CIVIL CODE – THE INDIAN SCENARIO

India is the world's largest democratic country with a population of more than 135 Cores people which usually hails from the 6 most practiced religions in India, i.e. Hindu, Islam, Christianity, Sikhism, Buddhism, Jainism, respectively. Apart from the religious factor, the Indian population is also distinguished on the grounds of language, domicile, culture, etc. Religion is the foundation of culture, custom, tradition and therefore it is a difficult task to abandon the long-practiced customs for any religion.

The debate over UCC has triggered much public debate on the grounds of eliminating gender discrimination and bestowing 'one nation one policy'. The Indian judiciary has also regularly emphasized enacting a UCC. While many personal Hindu laws have been codified in the 1950s the Muslim laws are not codified comparatively.

PERSONAL LAWS AND UNIFORM CIVIL CODE: TIMELINE

British period

During the British Raj, Personal laws were first framed mainly for Hindu and Muslims citizens.

Start of 2nd century

In the beginning of the twentieth century, the demand for a uniform civil code was first put forward by the women activists. The objective behind this demand was the women's rights, equality and secularism.

1940 – The Idea of Uniform Civil Code is born

The idea of Uniform Civil Code was tabled by the National Planning Commission (NPC) appointed by the Congress. There was a subcommittee who was to examine women's status and recommends reforms of personal law for gender equality.

1947 – Question of UCC as a Fundamental Right

UCC was sought to be enshrined in the Constitution of India as a fundamental right by Minoo Masani, Hansa Mehta, Amrit Kaur and Dr. B.R Ambedkar.

1948 – Constitution Assembly debated UCC

Article 44 of the Indian Constitution i.e. Directive Principles of State Policy sets implementation of uniform civil laws which is the duty of the state under Part IV.

1950 – Reformist Bill passed

Reformist bills were passed which gave the Hindu women the right to divorce and inherit property. Bigamy and child marriages are outlawed. Such reforms were resisted by Dr. Rajendra Prasad.

1951 – Ambedkar Resigns

Ambedkar resigned from the cabinet in 1951 when his draft of the Hindu Code Bill was stalled by the Parliament.

1985 – Shah Bano case

In this case, a divorced Muslim woman was brought within the ambit of Section 125 of Code of Criminal Procedure, 1973 by the Supreme Court in which it was declared by the Apex court that she was entitled for maintenance even after the completion of iddat period.

1995- Sarla Mudgal v. Union of India

In this case, Justice Kuldip Singh reiterated the need for the Parliament to frame a Uniform Civil Code, which would help the cause of national integration by removing contradictions based on ideologies. Therefore, the responsibility entrusted on the State under Article 44 of the Constitution whereby a Uniform Civil Code must be secured has been urged by the Supreme Court repeatedly as a matter of urgency.

2000 – Supreme Court Advocates Uniform Civil Code

The case of Lily Thomas v. Union of India (2000), where the Supreme Court said it could not direct the centre to introduce a UCC.

2015 – The Debate lives through

The apex court refused to direct the government to take a decision on having a UCC.

2016 – Triple Talaq Debate

When Narendra Modi asked the Law Commission to examine the issue.

2017 – Ruling of the Triple Talaq case

Triple Talaq (Talaq -e- biddat) was declared unconstitutional on August 22, 2017.⁶

CONSTITUTIONAL PROVISION RELATING TO UNIFORM CIVIL CODE

Article 44 of the Indian Constitution (Directive Principles of the State Policy) states that - “The state shall endeavor to secure for its citizens a uniform civil code throughout the territory of India.”

This article has always been a subject of debate and such debate has also left the subject of this article i.e. uniform civil code staggering and whirling in an orbit on an axis on its own with the rotating public opinion. The Constitution of India enshrines Article 44 of the DPSP with a view to achieve the uniformity of law, its secularization in order to make it equitable and non- discriminatory.

The preamble of the Indian Constitution which constitutes a Secular Democratic Republic’ which implies that there shall be no state religion and no state shall discriminate on the basis of religion. The uniform civil code must strike a balance between the protection of fundamental rights and religious principles of different

communities of personal laws of each religion that comprises of separate ingredients and are founded on different ideologies. It is often seen that Communalism breeds discrimination at two levels:

Between people of different religions and Between the two sexes⁷
 It was only the Hindu law where its codification was taken forward that too in spite of great protest but till now codification of Muslim law is still a sensitized issue owing to its politization.

THE INTENT OF JUDICIARY

The Supreme Court of India has always been a fervent supporter of the Uniform Civil Code. The landmark or the legendary case relating to uniform civil code is Mohd. Ahmed Khan v. Shah Bano (referred to as Shah Bano case) in which a divorced Muslim woman was brought within the ambit of Section 125 of Code of Criminal Procedure, 1973 by the Supreme Court in which it was declared by the Apex court that she was entitled for maintenance even after the completion of iddat period. It was pointed out in the Constituent Assembly debates that there are number of uniform laws that already exist in our country. Having Articles 14 and 15 on one hand and Article 25 on the other, have led the court in a fix hole so as to give precedence to which of the fundamental right to the Constitution of India. Providing remedy by the Supreme Court to Shah Bano proved to be a much easier path to protect the rights of the women.

THE COURT HAS STATED:

Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what is the religion professed by the neglected wife, child or parent?

Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of section 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. True, that they do not supplant the personal law of the parties but, equally the religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion.⁸

NEED OF UNIFORM CIVIL CODE

Uniform Civil Code is of highly necessity for the individuals belonging to different religions and denominations. And not only this, bringing this uniformity is exigent for the promotion of national unity. In order to achieve this goal, adhering to the spirit of secularism, various divergent religious ideologies must merge into a common and unified principles and objectives. The idea behind having this uniform civil code that governs personal laws is to treat every person equally with just and fair laws. Moreover, such code would aid to put in place the set of laws which would govern personal matters of all citizens irrespective of their religion, which is the cornerstone of secularism.⁹

Another pros of having this code would ensure national unity and integrity, to put an end to gender discrimination and also to strengthen the secular fabric. It is to be noted that the emphasis has been laid only on the gender friendly reforms of personal laws which is seen from Shah Bano case to Shayara Bano case who filed PIL in the Supreme Court in which triple talaq was declared unconstitutional. It is noteworthy that in the political and social scenario, the liberal sections of the society are demanding this code to be put into effect

which would govern individuals across all religions, caste and tribe and to protect their fundamental and constitutional rights as guaranteed by the Constitution of India.

MERITS OF UNIFORM CIVIL CODE

If the concept of One Nation One Code is enacted and enforced:

- ✓ It would accelerate national integrity,
- ✓ There could be avoidance of overlapping of provisions of law,
- ✓ Litigation would decrease due to personal law,
- ✓ There would be arousal of sense of oneness and the national spirit and
·There would be a new phase of the country with new force and power which would aid to face any odds after finally defeating the communal forces.¹⁰

The instances of such oneness and integrity are Israel, Japan, Russia and France. The achievement of uniform civil code becomes more desirable when it comes to the diversity of the matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. The uniform civil code will envisage uniform provisions that will be applicable to everyone and which will be based on social justice and gender equality in family matters.¹¹

SECULARISM V/S UNIFORM CIVIL CODE

Secularism and the freedom of religion has been the spine of controversy that revolves around UCC which is enumerated in the Constitution of India. As per the preamble of the Indian Constitution which states that ‘**Secular Democratic Republic**’ which implies that there should not be state religion. It is to be noted that a state is only concerned with the relation between man and man and not the relation of man with God which further implies that there should be no interference of any religion with the mundane life of an individual.¹²

In the case of S.R. Bommai v. Union of India¹³, it was held by the court that religion is the matter of individual faith and cannot be mixed with the secular activities. Secular activities can be regulated by the State by enacting a law.

According to Article 25 and 26 of the Indian Constitution which guarantees right to freedom of religion, where Article 25 guarantees to every person the freedom of conscience, and the right to profess, practice and propagate religion. But such a right is subjected to some reasonable restrictions such as public order, morality and health envisaged in Part III of the Constitution of India.¹⁴

The scope of Article 25 and 26 extends to acts done in pursuance of religion and contains guarantees for ritual and observations, ceremonies and modes of worship which are the integral parts of the religion.

In a civilized society, there is no necessary connection between religion and personal law. The UCC will not and shall not result in the intrusion of one’s religious beliefs that relates mainly to maintenance, succession and inheritance which implies that under the UCC, a Hindu will not be compelled to perform Nikah and under Muslim law, a Muslim will not be compelled to perform Saptpadi. But there will be a common law in the matters of inheritance, maintenance, right to property and succession.¹⁵

The whole debate can be summed up by the judgment given by Justice R.M. Sahai. He said: “Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fiber. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression.

Therefore, a unified code is imperative, both for protection of the oppressed and for promotion of national unity and solidarity.”¹⁶

ROLE OF INDIAN JUDICIARY

The judiciary has faced a plethora of problems in upholding the social reforms in the private sphere that the legislation tries to bring through various enactments. There is a surfeit of cases that takes into consideration the concept of Uniform Civil Code. Some of them are as follows: **Mohd. Ahmed Khan v. Shah Bano**¹⁷(referred to as Shah Bano case) in which a divorced Muslim woman was brought within the ambit of Section 125 of Code of Criminal Procedure, 1973 by the Supreme Court in which it was declared by the Apex court that she was entitled for maintenance even after the completion of iddat period.

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Sarla Mudgal v Union of India¹⁹1995, in which Justice Kuldip Singh reiterated the need for the Parliament to frame a Uniform Civil Code, which would help the cause of national integration by removing contradictions based on ideologies. Therefore, the responsibility entrusted on the State under Article 44 of the Constitution whereby a Uniform Civil Code must be secured has been urged by the Supreme Court repeatedly as a matter of urgency.

Mary Roy v. State of Kerala²⁰,where it was argued before the Supreme Court was that certain provisions of Travancore Christian Succession Act, 1916, were unconstitutional under Art. 14 Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was also argued that the Travancore Act had been superseded by the Indian Succession Act, 1925. The Supreme Court avoided examining the question whether gender inequality in matters of succession and inheritance violated Art.14, but , nevertheless, ruled that the Travancore Act had been superseded by the Indian Succession Act Mary Roy has been characterized as a “~momentous’ decision in the direction of ensuring gender equality in the matter of succession.

Bai Tahira v. Ali Hussain Fisaali²¹,according to the Ambedkarian point of view, he states that:

“Speaking for myself, there are several excellent provisions of the Muslim law understood in its pristine and progressive intendment which may adorn India’s common civil code. There is more in Mohammed than in Manu, if interpreted in its humanist liberalism and away from the desert context, which helps women and orphans, modernises marriage and morals, widens divorce and inheritance.”

State of Bombay v. Narasu Appa Mali²²,in this case the constitutional validity of the Bombay (Prevention of Hindu Bigamous Marriages) Act, 1946 was to be determined by the High Court of Bombay. One of the two major contentions was that it was violative of articles 14 and 15 since the Hindus were singled out to abolish bigamy while the Muslim counterparts remained at full liberty to contract more than one marriage and this was discrimination on the grounds of religion. Questions such as these were raised due to an absence of a common civil code and clash of different principles in different personal laws.

Srinivasa Aiyar v. Saraswati Ammal²³,in this case the High Court of Madras upheld the validity of Madras Prohibition of Bigamy Act on similar grounds.

UNIFORM CIVIL CODE BILL

A Bill on the voluntary Uniform Civil Code is ready to be introduced in the session of Parliament, the moment such code is made optional, it ceased to be uniform. The government would do well to take immediate steps to codify each set of personal laws instead of framing such optional civil code.

Personal laws relating to marriage, divorce, minority, guardianship, maintenance and succession are covered by this bill. The passing of this bill will repeal the Special Marriage Act, 1954. Proposal relating to the consolidation of the Indian Divorce Act and the Indian Christian Marriage Act into one statute on the analogy of the Hindu Marriage Act, 1955 have been proposed by the Law Commission and has also suggested certain reforms in law.

Objectives of the UCC Bill, 2018

- Implementing the right to equality enshrined under [Article 14](#) and the prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth enshrined in [Article 15](#) of the Constitution of India.
- Eliminating personal laws which are established on the foundations of religious beliefs and provide a homogenous structure of laws.
- Abolishing any type of discrimination against women may arise due to the inadequate and dissimilar laws in the Indian legal mechanism.

CONCLUSION

After such a deliberate discussion and constitutional debates, it can be concluded that mere three words and the nation will break into hysterical jubilation and frantic wailing. Uniform Civil Code covers the aspects of social, political and religious aspects.

According to a man of ordinary prudence, the code should be just and fair and a balance should be carved between protection of fundamental rights and religious dogmas of individuals by the UCC. It is to be identified that what is the moving jurisprudence behind UCC that is it the integrity of the nation with one nation people motto or is it the eradication of the gender based injustices engrained in all personal laws. However, it is noteworthy that UCC has come up with as a champion of gender equality.

It is of no doubt that the issue of the reform of personal laws of different communities and the enactment of uniform civil code is a tedious task. The deep rooted multiplicity of personal laws, culture and custom are the real hurdles for the implementation of uniform civil code.

Two questions need to be addressed which are being completely ignored in the present din around UCC.

- ❖ Firstly, how can uniformity in personal laws are brought without disturbing the distinct essence of each and every component of the society. What makes us believe that practices of one community are backward and unjust?
- ❖ The second question is that whether uniformity has been able to eradicate gender inequalities which diminish the status of women in our society?

Sooner or the later we will be coming with the answers to this questions that have created turmoil in our mind.

SUGGESTIONS

The previous discussions which have been made in the above debates have led to suggest the following measures:

- The state being disinclined to impose Uniform Civil Code on diverse people, in such circumstances, the minimum a state should do to generate those conditions that will make a progressive outlook of the people.
- Muslims being the most backward among the minorities in India, the only solution is to spread education Muslims masses. It becomes the duty of the Muslim intelligentsia to educate the Muslim community about its rights and obligations.
- A good environment for the Uniform Civil Code must be prepared by the government by explaining the contents and significance of Article 44 of the Indian Constitution.
- Social reforms should be brought slowly and steadily by the State.
- An attempt should be made to enact a model Uniform Civil Code embodying what is best in all personal laws. It must be a synthesis of the good in our diverse personal laws.

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