



ONE NATION ONE LAW: UNDERSTANDING UNIFORM CIVIL CODE

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ABSTRACT

The concept of Uniform Civil Code (UCC) in India has been the focus of intense discussion and debate, encapsulating the desire for a unified legal system that cuts beyond religious lines. India is a large country with a rich cultural history. Due to the extreme cultural diversity, there exists so many diverse denominations within each major religion. Significant differences exist in the practices and modes of worship. Formulating a uniform civil law, for a nation as diverse as India, is an incredible task. The Uniform Civil Code aims to establish a single set of laws applicable to all citizens, addressing marriage, divorce, inheritance and cohabitation. In this article, the idea of One Nation, One Law is examined thoroughly, which explores its historical foundations, constitutional provisions, judicial intervention and current context in relation to India's Uniform Civil Code.

Keywords: *Uniform Civil Code (UCC), Cultural diversity, Religion, India*

INTRODUCTION

In diverse societies, the coexistence of multiple personal laws based on religion often poses challenges to the notion of equality, secularism and justice. The concept of a Uniform Civil Code (UCC) emerges as a potential solution to harmonize legal practices across religious communities within nation. Uniform civil code, referred to as “One Nation One Law”, proposes a single set of laws governing civil matters such as marriage, divorce, inheritance and adoption, applicable to all citizens irrespective of their religious affiliation.

The discourse surrounding the implementation of a Uniform Civil Code is deeply intertwined with historical, cultural and political contexts. In countries like India, where religious diversity is a defining characteristic, the debate over UCC is particularly complex. Proponents argue that the UCC would provide equal status to all citizens regardless of their religious background, promoting national integration and gender justice. However, critics express concerns that it could erode the right to religious freedom and threaten minority communities’ cultural identities.

The expression ‘Uniform Civil Code’ consists of three terms Uniform, Civil and Code. The word Uniform refers to a form of thing.¹ The term Civil is derived from a Latin word *Civils* which means citizen.² When it is used in term of law, it means the law concerned with the ordinary citizen. The word Code is derived from a Latin word *Codex*, which means a book.³

Thus when the adjective “Uniform” is used with the term “Civil Code”, it denotes a code that must be uniformly applicable to all citizens regardless of their religion, sex, race, cast and creed.

It is crucial to note that the word “civil code” refers to the full set of laws that regulate rights to property as well as other personal matters which are as following:

- i. Marriage, divorce and other matrimonial clauses
- ii. Adoption
- iii. Partition
- iv. Maintenances
- v. Gifts and will
- vi. Inheritance
- vii. Guardianship
- viii. Religious institutions
- ix. Joint family system

HISTORICAL BACKGROUND OF UNIFORM CIVIL CODE IN INDIA

The history of the Uniform Civil code in India is marked by a series of debates, discussion and legal efforts aimed at reforming and unifying personal laws here in an overview of the historical developments related to Uniform Civil Code in India:

¹ Shivangi Agrawal, Uniform Civil Code: A Religious Myth or Legal Controversy, Vol.2 issue1, Supremo Amicus

² Encyclopedia Americana, Vol. 6(1960)

³ Encyclopedia Americana, Vol. 7(1960)

A. Pre –independence era

- **Hindu period:**

Laws in Hindu civilization during this period were largely standardized because they originated from the divinely inspired sages such as Manu, Brihupati, Narada, Kautilya etc. The Vedas and other Hindu writings served as the foundation for the rules that governed the entire Hindu society, which functions an organizational unit under the guidance of Hindu sages. Thus uniformity of laws was therefore a general rule rather than an exception.⁴

- **Muslim Period**

India's legal history enters a new era during the Muslim period. The arrival of Muslim invaders at the start of 12th century marked the beginning of the end of Hindu period. Although these Muslim conquerors did not recognize Hindu law for themselves, they did permit Hindus to be ruled by their personal laws. As a result of this two unique systems of personal laws emerged. But when it came to criminal law, there was no difference between the legal systems of Hindus and Muslims.⁵

- **British Period**

The goal of the British colonizers was to establish a methodical and forward-thinking legal system in India. The criminal and procedural laws were progressively codified and introduced by the Britishers. But they chose not to adopt a comprehensive, secular civil code in relation to personal laws.⁶ In this case, the British government adopted the non-interference approach in matters typically associated with religion. Thus, there was no attempt to draft a secular civil code in British India. During colonial era, the 1840 Lex Loci report said that the personal laws of the region should remain unaffected by the codification of Indian laws pertaining to criminality, contract and evidence. They refrain from interfering with the religious demography of the country, fearing a community backlash.⁷

B. Post Independence era

The discussion for Uniform Civil Code persisted after the country gained independence in 1947. For over two years, this issue suffered convulsions on the floor of the Constituent Assembly, owing to the statements of progressive legislators, dissenting voices and concerns expressed by minority representatives.

The sub-committee on Fundamental rights had included uniform civil code as one of the directive principles. Draft Article 35 (now article 44) directed the stated, "*The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*"⁸

In the assembly, disagreements arose from the discussion of the proposed article. Muslim members presented the majority of the objections to the draft article, proposing changes that would have excluded personal laws from its purview. **Mohammad Ismail Khan**, an Assembly member, opened the debate by suggesting an addition to Article 35(now Article 44) of the draft constitution. He pushed to include the proviso

⁴Kiran Deshta, *Uniform Civil Code: In Retrospect and Prospect*,40(Deep & Deep Publication Pvt. Ltd.,2002)

⁵ Ibid, p.12-14

⁶ Ibid, p.17-19

⁷ Tushar bhardwaj and Abhinav Mohan Goel, "Uniform Civil Code",vol.8 Supremo Amicus,p.272,(2018)

⁸ Constitution Assembly Debate,(1948), Vol. VII

“Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.”⁹

Ismail argued that a secular state should not interfere with long-standing religious practices as it could breed discontent and subvert harmony in the country.

Another member, **Naziruddin Ahmad** proposed to introduce a similar, but more descriptive proviso:

“Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner the Union Legislature may determine by law.”¹⁰

K M Munshi, a congressman and member of the drafting committee for the constituent assembly, pointed out that women would never be treated equally even though they have a fundamental right against discrimination if issues like inheritance and succession were recognized under of personal religious laws. Therefore there is no justification for a civil code to not exist throughout the territory of India.¹¹

The chairman of the drafting committee, **Dr BR Ambedkar**, emphasized that almost every aspect of human relationship were covered by uniform laws, with the exception of a small portion pertaining to personal laws related to marriage and succession, which the UCC is intended to address. Ambedkar did, however, give some reassurance to concerned members. He argued that the wording of the article ensured that the UCC could not be imposed on all citizens and could apply on those who make a declaration that they are prepared to be bound by the code.¹²

Following these final remarks, the Assembly rejected the amendments put forth by Mohammad Ismail Khan and Naziruddin Ahmad and the proposed article was renumbered as **Article 44** of the Constitution, under the chapter Directive Principles of State Policy. The Article reads as:

“The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.”¹³

CONSTITUTIONAL PROVISIONS AND UNIFORM CIVIL CODE

A number of our Indian constitution's provisions are both directly and indirectly connected to the topic of the Uniform Civil Code. The only clause in our Indian constitution that directly addresses the Uniform Civil Code is **Article 44**.

Article 44 stipulates, **"The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India"**.

This article is included in Part IV of the Indian Constitution, titles Directive Principles of State Policy (DPSP). The DPSP are the guidelines given to the federal institutes governing the State of India, to be kept in mind while framing laws and policies.¹⁴ As defined in Article 37, these provisions shall not be enforceable, but the principles laid therein are nevertheless fundamental in the governance of the country, and shall be the duty of the state to apply these principles in making laws.

⁹Ibid.,p.540

¹⁰ Id., p.541

¹¹ Editorial, “Uttarakhand civil code: how needle has moved”, The Indian Express, Feb. 8, 2024

¹² ibid

¹³ Article 44 of the Indian Constitution

¹⁴ Anushka Basu, Uniform Civil Code: An Overlooked Constitutional Necessity, vol.21, Supremo Amicus

Article 44 uses words endeavour and secure, which indicates that the state can apply the liberal approach as well as can adopt intermediary arrangement for securing a uniform civil code for the citizens of India. The word 'state' used in this article has a close reference to Article 12 of the Indian Constitution.¹⁵ Article 12 makes it clear that state includes¹⁶, Government and the Parliament of India, Government and State Legislature of each of the states and the local or other authorities functioning within the territory of India or under the control of the Government of India. Thus it can be said that all authorities functioning within territory are under an obligation to make efforts towards one civil code.

Article 25 of the Indian Constitution is the main barrier to UCC adoption in India is. Article 25 guarantees religious freedom as fundamental right. Under this article, a person is free to practice and propagate his or her faith. There is still observance of the common religious customs found community personal laws. These communities contend that they have the authority to enact personal laws according to their community's norms because of Article 25's right to religious freedom. The adoption of Uniform Civil Code is being challenged as breach of Article 25.¹⁷

INDIAN JUDICIARY AND UNIFORM CIVIL CODE

The judiciary is accorded the highest importance in democratic nations since the courts serve as a vehicle for settling disputes, and the judiciary has an even more important function to perform in cases where there is a written constitution. The Indian Constitution, like that of all other democracies, aims to construct a secular government based on social justice. It does, however, also ensure its citizens right to a number of fundamental freedoms with some legitimate restrictions. And if these fundamental rights obstruct the government in carrying out its constitutional mandate as stated in Article 44 of the Constitution, then the judiciary has the authority to resolve the dispute between them. Few landmark cases will be discussed next that shows how the judiciary has supported the idea of Uniform Civil Code and served as a balancing mechanism to protect the rights.

In case of **State of Bombay V. Narasu Appa Mali**¹⁸, the validity of the Prevention of Hindu Bigamous Marriage Act, was challenged, which abolished polygamy in particular community. The then Chief Justice of Bombay High Court J. M.C. Chagla observed that one community might be prepared to accept the social reforms; another community may not yet be prepared for it. Article 14 does not lay down that the state legislature may not be right while deciding to bring about the social reforms by stages and stages may be territorial or they may be community wise. Thus the court did not only uphold the validity of the legislation but also emphasized that the said legislation must be enforced in its true spirit as an essential step to secure for the citizens a Uniform Civil Code through the territory of India.

In **Mohammad Ahmed Khan v. Shah Bano begum**¹⁹, the Supreme Court upheld a Muslim women's entitlement to maintenance from her spouse under section 125 of the Criminal Procedure Code, even after

¹⁵ Supra note 4, p.44

¹⁶ Article 12 of the Indian Constitution

¹⁷ Aditya Kumar Tripathi, "An insight into the Uniform Civil Code", Vol. VI Issue 1, IJLLR

¹⁸ AIR 1952, Bom., 84

¹⁹ AIR 1985, SC 945

her iddat period had completed. It also acknowledged that a Uniform Civil Code would facilitate in elimination of inconsistencies grounded in ideologies.

In **Sarla Mudgal V. Union of India**²⁰, the Supreme Court held that a Hindu husband is not permitted to convert into Islam just to marry another women, without formally ending his first marriage. Justice Kuldeep Singh while delivering the judgment remarked the need of Uniform Civil Code and urged the government to have a relook at Article 44 of the Constitution.

In **Ms. Jorden Deingdeh V. S.S Chopra**²¹, the Court said that the tie as come for a complete reform of law of marriage and make a Uniform Civil Code for the country.

In **Shabnam Hashmi V. Union of India**²², a Muslim social activist had filed a petition to allow her to adopt a child and to guarantee her due rights. The issue stemmed from the fact that Islamic Personal Law does not acknowledge adoption or grant equivalent rights. The Supreme Court ruled that adoption is a fundamental right for all the citizens, regardless of caste, creed or religion and that a person's ability to adopt a child is protected by Juvenile Justice Act of 2000, which supersedes all local, personal laws and religious rules.

In **Shayara Bano V. Union of India**²³, the Supreme court ruled that Triple Talaq is unconstitutional because it violates, the fundamental rights guaranteed by Articles 14,15, 19 and 21 of the constitution as well as the dignity of Muslim women. It also suggested that legislation governing Muslim divorces and marriages be passed by the parliament. Two years later in July, parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019.

In **Jose Paulo Coutinho V. Maria Luiza Valentia Pereira**²⁴ case, the court hailed Goa as shining example where the uniform civil code is applicable to all regardless of religion except while protecting certain limited rights and accordingly urged for its pan – India implementation.

The above discussed cases shows a strong judicial response to encourage the constitutional philosophy of uniform civil code. These decisions are a strong testimony to the fact that the ambit of personal law can be restrained if it clashes with the general law of the land designed to promote the welfare of the community as a whole.

CURRENT SENARIO

The Uniform Civil Code (UCC) Bill was passed by the Uttarakhand Assembly On February 7, making it the first legislature in independent India to enact legislation that provides uniform rules on marriage, divorce, inheritance of property and live in relationship for all citizens, regardless of their religious beliefs.²⁵ The passing of this bill represents a major step in the direction of a more uniform and equitable legal framework.

²⁰ (1995)3 SCC635

²¹ AIR 1985 SC 934o

²² AIR 2014 SC 1281

²³ (2017) 9 SCC 1

²⁴ AIR 2019 SC 103

²⁵ Nistula Hebbar, Uttarakhand Uniform Civil Code| what does the bill entail ,available at <https://www.thehindu.com/news/national/watch-uttarakhand-uniform-civil--code-what-does-the-bill-entail/article67835160.ece> (visited on February 20,2024)

It reflects the aim of the constitution expressed in Article 44, which emphasis the necessity for the state to work toward establishing a uniform civil code throughout the territory of India.²⁶

The bill, which aims to establish a unified personal laws for residents of Uttarakhand, excluding the tribal community, has been both praised and criticized. Proponents argue that it is a step towards gender equality, simplification of laws and national integration. They view it as a progressive move that could potentially protect vulnerable sections of the society and promote unity. The U- UCC has eliminated the previous disparities between separate and coparcenary joint family property (JFP) in Hindu law, as well as the uneven shares for women under Muslim law²⁷. However, critics counter that before such legislation ispassed, there should be more broad consensus and that there may be infringement on personal laws, due to cultural diversity.

With the passing of Uttarakhand Uniform Civil Code Bill an important step has been taken in the long standing goal of having a Uniform Civil Code (UCC) in India. Despite some drawbacks and implementations challenges, the Bill has the potential to contribute to the state's as well as India's journey toward social justice, equality and secularism.

CONCLUSION

The adoption of the Uniform Civil Code in Uttartakhand marks a significant step towards fulfilling one of the key election promises of the government. The UCC aims to bring all communities under a common law to regulate practices such as marriage, divorce, adoption and inheritance. However, the implementation of a nationwide UCC may be some time away, as it faces pushback from religious minorities and other communities. Despite its contentious nature, the UCC has the potential to bring about greater unity and equality in India's legal system, but it must be approached with caution to ensure it does not infringe on religious and cultural rights. The Uttarakhand UCC bill has been met with mixed reactions, with some supporting the bill and others opposing it due to concerns about infringement of rights, social tensions and non- inclusivity. The bill has the potential to contribute to the state's journey towards social justice, equality and secularism, but it must be implemented with sensitivity to the diverse cultural and religious practices in India.

²⁶ Kausar Jahan, Why Uttarakhand Uniform Civil Code is a step towards equality and Progress, available at <https://indianexpress.com/article/opinion/columns/uttarakhand-uniform-civil-code-step-equality-progress-9151101/> (visited on February 20,2024)

²⁷ Editorial,"A Very flawed Code", The Indian Express, February 10, 2024