

UNIFORMITY OF CIVIL CODE: AN ESSENTIAL NEED FOR SECULARISM OF INDIA

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"The implementation of U.C.C., i.e., a Uniform Civil Code, doesn't mean that the Hindu Code would be implemented on all citizens of the country. "Article 44 of the Constitution of India provides that the Government will make all endeavours to implement the U.C.C, i.e., Uniform Civil Code in the country. Another significant point that is pertinent to make clear is that implementing a Uniform civil code doesn't mean that all citizens of the country will cover under the Hindu

code."¹

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Introduction

The Indian Constitution establishes the secular states. All political parties feel that secularism, its unity and integrity are in more danger than ever before. To maintain unity and integrity and implement secularism, some strict steps must be taken. One of them is a uniform civil code for the citizen of India. A uniform civil code would bring a secular and egalitarian society, essential for developing a democratic nation like India. U.C.C., i.e., a uniform civil code is therefore essential to protect the supremacy of the Constitution from the threat of fundamentalism. It will also strengthen the very process of civil justice.²

What is U.C.C. or uniform civil code?

The term civil code covers all civil laws and statutory provisions governing civil rights relating to personal property and other personal matters like maintenance, divorce, marriage, inheritance and adoption. As things stand, there are different laws governing these aspects for different communities and religions in India.

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- 1- Prime Minister Sh. Narendra Modi, 6 May 2014, The Economic Times.
- 2- Deenanath Raina, Uniform Civil Code and Gender Justice, Reliance Publishing House, New Delhi, (1stedn., 1996) at P.89

Thus, the laws governing inheritance or divorce among Hindus would differ from the laws of other communities like Muslims or Christians. Article 44 of the Indian Constitution gave directions to the State to secure a uniform civil code throughout the territory of India.

Importance of the role of Article 44

Article 44 comes under the Directive Principle of State policy, i.e., Part 4 of the Indian Constitution, which is about Article 37, has been declared intransitive as fundamental to the reign of India, and it will be the duty of State to use it to make new law. Initially, it has been the view of The Supreme court of India that if there is any conflict between Part-3 and Part-4 about a fundamental right, then fundamental rights will be given more importance, but with time, the courts' views have changed.

In the case of **Keshwanand Bharti V. Kerla State**³ regarding fundamental rights, Justice Mathew emphasized that the Directive Principle of State Policy mentioned in Part-4 are the essential elements of the Indian constitutions. In the same way, in **Minerva Mills v. Union of India**⁴, Justice Chandrachud reviewed that the combination of Part-3 and 4 abide by social revolution, and they both are the internals of the constitutions. Justice Bhagwati stated that fundamental rights are undoubtedly essential and valuable in the same case. With the brief introduction to such disciplines, it is clear that if State wants to achieve its target about social and economic justice, which is prescribed in Article 14, 15 of the Constitution, then it is to enforce Directive Principles of State policy and Article 44 is an integral part of Directive Principles; therefore, it is compulsory to enforce.

3. AIR 1773 S.C. 1461
4. A.I.R. 1980 S.C. 1789

Nevertheless, the question arises whether the Directive Principles mentioned in Article 44 will not have a negative impact on the rights of minority people or it will not violate the rights of religious freedom. All these questions must be brought into light before the makers of the constitutions.

The view of Constitutions makers

There were two objections to a uniform civil code for citizens before the drafting committee. The first was that such code impedes Article 25, which is related to secularism second one was whether it would cause defines injustice to minority rights. However, Hon'ble member of the committee, Mr. K.M. Munshi explained that "Article 44 does not damage Article 25 which is related to secularism and Article 25 does not allow to make such law which bound the religious code and conduct". It will not be accurate to say that a uniform civil code is an atrocity over minorities by the majority. Many Muslims and European countries have equal codes for minority and majority people. In this context, the Hindu law model is against Manu Smriti and Yagvalkaya before legislation, but we accept the present Hindu Law because our society is a developing society. We have reached the level where the need to organize and unite the nation which is essential for us.

British and Muslims view the strengthening of the Uniform Civil Code

According to the British reign, this view came into existence that personal law is part of the religion; British people and British courts supported this view.

The first Muslim emperor Alloudin Khilzi made many changes against the Shariat law. Then Kazi of Delhi objected to these improvements, but Alloudin Stated that "I am unknown and doing my best for my country as well as I am stress-free that Supreme power will forgive me for my ignorance and virtuous". In this way, the modern Government can accept that the law is part of religion.

In support of Article 44, Mr. Alladikrishna Swami Ayer explained that "The Principles of this Article established fraternity and harmony among several communities in real so it must be enforced"⁵. Even Sikhism and Buddhism have to follow the Hindu law willingly. It is a good initiation for this Article 44. The review of the Constitution Drafting Committee members makes clear that the Uniform Civil Code supports fraternity and coordination among different communities, and it will assist in maintaining the unity and integrity of the nation.

Judiciary and Uniform Civil Code

Judiciary is the guardian of an individual's liberty and the interpreter of law. It tries to remove hurdles of the society by giving a positive interpretation of legal provisions, which helps society move forward.

The issues became an open debate regarding Uniform Civil Code with the much-celebrated Supreme Court decision in **Mohd. Ahmad Khan v. Shahbano Begum**.⁶ The case arose out of an application for the maintenance by a Muslim divorced woman under S.125 of Cr.P.C. in this case, Chief Justice Chandrachud J. remarked:

"It is a regrettable issue that Article 44 of our Indian Constitution has become a dead letter.... There is no evidentiary proof of any official activity to implement a Uniform Civil Code. A uniform civil code will help in the integration of all communities at the national level by eliminating disparate loyalties to laws

having conflicting ideologies. No social or religious community is likely to bell the cat by making a gratuitous concession on the issue. It is the State which is obliged to secure a common civil code for a citizen of the country, and undisputedly, it has the legislative competence to do so... We understand the difficulties involved in

5. CAD Part 7 Page 546 to 548

6. A.I.R. 1985, SC 945

bringing persons of different beliefs, faiths and persuasions on a common pedestal. However, a start has to be initiated if the Constitution is to have any meaning."

In Shab Banu's case, the Judgement created a commotion in the country, especially from some fundamentalist organizations. Yielding to the pressure, the then Government found a way to circumvent the Shab Bano decision by enacting the Muslim Women (Right to Protection on Divorce) Act, 1986, which had the effect of curtailing the rights of Muslim women of maintenance under S. 125. The detailed explanation given for the implementation of this Act was that the Supreme Court's observation on the need for enacting the Uniform Civil Code is not binding on the state government or the legislation and that there should be no intrusion into personal laws unless the demand comes from within. The Act made the application under S.125 Cr P.C. an option, subject to the consent of both the parties.

In a landmark judgment in **Sarla Mudgal v. Union of India**,⁷, the Supreme Court directed the Government to reconsider Article 44 of The Constitution of India, promoting the State to secure U.C.C which, according to the Court, is imperative for both protection of the oppressed and promotion of national unity and integrity. In this case, the CourtCourt gave the above direction considering

the issue of whether a Hindu male married under Hindu law can solemnize a second marriage after conversion to Islam and without dissolving his first marriage. The Supreme Court held that such a marriage would be illegal, and the husband can be prosecuted for bigamy under section 494 of I.P.C. The Court observed that marriage, divorce and religion are in nature as much a matter of faith and conviction and not convenience. The Court held that the drafting of a uniform civil code was imperative. To quote Justice Kuldeep Singh from the Judgement,

7. (1995) 3 SCC 635

"Article 44 of the Indian Constitution has to be retrieved from the cold storage where it has been lying since 1949. It is significant to discuss that where more than 75 per cent of the citizens have already been brought under personal codified laws, and there is no proper explanation for not introducing the U.C.C for all the citizens in the territory of India."

R.M. Sahai, J, in his separate concurring opinion, emphasized the aspect of human rights for women under a uniform civil code. He observed:

"...a uniform civil code is significant both for the protection of the oppressed and promotion of national unity and solidarity. The State would be well advised to fix the responsibility to the Law Commission which may in consultation with the Minorities Commission examine the matter and bring about comprehensive legislation in keeping with the modern-day concept of human rights for women."/

However, this decision evoked severe criticism from many quarters, mainly because the judges in directing the Government to draft a civil code overstepped their legitimate limits- by ordering the executive on policy issues.

Seervai remarked that the issues involved in the case did not raise any question of the desirability of a uniform civil code; but it was raised and discussed 'gratuitously' by Kuldeep Singh, J.⁸

In **Noor Saba Khatoon v. Mohd. Qasim**.⁹ The Apex court held that a divorced Muslim woman is entitled to and may claim maintenance for her children till they achieve the majority. The Court further held that both under The Muslim Personal Law and under section 125 of Cr.P.C., the father's obligation was absolute when the children lived with the divorced wife.

8. A Common Civil Code – A Mirage, in Feroza H. Seervai (ed.) The Seervai Legacy, Universal Law Publishing Co. Pvt. Ltd., New Delhi, (1st ed., 2000) at pp. 118.124.

9. A.I.R. 1997 SC 3280

In **Danial Latif v. Union of India**,¹⁰ In this case, the Muslim Women (Protection of Rights on Divorce) Act 1986 was felt to overrule the Supreme Court Decision in the case of **Mohd. Ahmed Khan V. Shah Bano Begum**, there were also many protests and issues after the landmark judgement of the Shah Bano Case. It was felt as confusion in the Muslim Personal Law. The Muslim Personal Law for maintenance or Nafaq states to give maintenance to the wife even if he is poor. Thus, to maintain the wife even after divorce within the iddat period, the parliament passed the Muslim woman act of 1986. Denial Latifi, who was one of the counsels of Shah Bano, filed the case challenging the Muslim woman Act 1986 and stated it to be constitutionally invalid.

The Apex Court upholds the constitutional validity of the Act and decides as follows

- 1) A Muslim husband is liable to make fair and reasonable provisions for the future of the divorced wife extending beyond the iddat period, including her maintenance, and the husband must make such provision within the iddat period in terms of section 3 (1) (a) of the Act.
- 2) To maintain his divorced wife arising under section 3(1) (a) of the Act, the Liability of a Muslim husband is not confined to the iddat period only.
- 3) A divorced Muslim wife who has not remarried or opt not to remarry and who cannot maintain herself after the iddat period can initiate the proceedings as provided under section 4 of the Act against her relatives, liable to maintain her, in the same proportion to the properties which they will inherit on her death according to Muslim Law from such divorced women including her children and parents. If any of the relatives cannot pay maintenance, the CourtCourt may give the directions to the State Wakf Board established under the said Act to pay such maintenance.
- 4) The provision of the Act do not offend Articles 14,15 and 21 of the Constitution of India

10. A.I.R. 2001 SC 3958

In **Pragati Varghese v. Cyril George Varghese**,¹¹, The Supreme court struck down S.10 of the Indian Divorce Act. The CourtCourt held that the mentioned provision derogates human dignity and violates Article 21. The common trend that can be gauged from all the above decisions is that the Supreme Court was heavily in favour of enacting a common civil code.

Later, in the case of **John Vallamattom v. Union of India**,¹², the Apex Court, considering the issue of the constitutional validity of S.118 of the Indian Succession Act, partially regained its old stand and exhorted the legislature to the cause of a common civil code. The appellant's case was that S. 118 of the said Act was discriminatory against Christians as it imposed unreasonable restrictions

on their donation of property of religious or charitable purpose by will. The three-judge bench of the Supreme Court,¹³ holding the provision unconstitutional as being a violation of Article 14, observed:

"We state that Article 44 of the Indian Constitution provides that the State shall secure a U.C.C, i.e., Uniform Civil Code throughout the territory of India for their citizens...It is regrettable that even after 75 years of independence, the State cannot implement U.C.C and Article 44 of the Indian Constitution has not been effected yet. Parliament is still to step in and frame a common civil code favouring all communities residing in the country. A common civil code will be helpful for national integration by eliminating the contradictions based on ideologies." ¹⁴

11. A.I.R. 1997 Bombay 349
12. A.I.R. 2003 SC 2902
13. Consisting of V N Khare, CJ., SB Sinha and Dr A R Lakshmanan, J.J.
14. Per Justice V.N. Khare. Para 44

Thus, as seen above, the Supreme Court has, on several instances, reiterated the need to have a uniform civil code in place and reminded the State of its duty to enact a unified civil code. However, none of these has been considered binding enough on the executive or the legislature.¹⁵

New Triple Talaq law speaks to a drive-in India to introduce a uniform civil code.

Shayara Bano V Union of India and Others ¹⁶

The issue of essential religious

practice was discussed in this case at length. The Supreme Court considered what is permitted by religion that become a religious custom or a positive tenet of religion. The Supreme Court held that a practice does not acquire the sanction of any religion just because it is permitted or not prohibited by the followers of that religion and any significant or essential part of that religion has to be determined concerning its tenets, practices, doctrine, historical background, etc. of the given religion. The Court further held that an essential part of religion means the core belief upon which a religion is founded, and essential practices mean those practices that are fundamental to following a religious faith. It is the basis of essential parts or practices upon which the superstructure of religion is built and without which religion will be no religion. An essential practice test to determine whether a part of the practice is essential to religion and to find out whether the nature of the religion will be changed without that part of the practice

may be applied to determine the constitutionality of any religious custom or practice if it seems immoral or unconstitutional on its face.

If the elimination of any part or practice could result in a fundamental change in the character of that religion, its faith or belief, then such part could be treated as an integral or essential part of that religion. There cannot be addition or subtraction to such part because it is the essence of that religion, and alteration will change its fundamental character. It is such a permanent essential

part that the Constitution protects. Nobody can say that an essential part of the practice of one religion has changed from a particular date or by an event.

In a historic judgement in the Shayara Bano case, The Supreme Court decided that the practice of Talaq-e-Biddat or Triple Talaq (i.e., Instant, Irrevocable, Unilateral divorce by husband by the formula of pronouncing divorce three times) is not protected by Act. 25 of the Indian Constitution as it is not an essential religious practice.

15 . Dr. J.N. Pandey – "Constitutional Law of India" Central Law agency (51st Edn 2014) P.444

16. (2017) 9SCC Writ Petition (C) No. 118

Talaq-e-Biddat or Triple Talaq is against the fundamental tenets of the Holy Koran and Thus violets the Shariat even though triple talaq is lawful in Hanafi Jurisprudence, yet that very Jurisprudence Castigates Triple Talaq as Sinful.

Taking into consideration the argument of various religious groups and agreed petitioners. The honourable Supreme Court, with the majority ratio of 3:2, set aside the practice of Triple Talaq or Talaq-e-Biddat by holding it unconstitutional and arbitrary.

The Honorable Court further directed the Government of Union of India to consider the views taken by the CourtCourt in the Judgement and lay down a proper legislature to regulate the practice of Divorce in the Muslim Community. Hopefully, this landmark judgement that upholds the Woman's dignity and guarantees fundamental rights of women, such as the right to equality, established the way for a common civil code.

The Uniform civil code elaborated by the civil society and the state Government is the final stage of this national debate. A common civil code is part of the promises made by the Indian State through the Constitution to its citizen.

Muslim Women (Protection of Rights on Marriage) Act 2019

In December 2017, citing the Apex Court judgement and the incidents of triple talaq in India, the State introduced the Muslim Women (Protection of Rights on Marriage) Bill 2017. The bill proposes making triple talaq in any form spoken, in writing, or electronic means- illegal and void. Punishment for breach of law

was proposed to include up to three years imprisonment for the husband pronouncing Triple Talaq. After passing by the Lok Sabha and Rajya Sabha, the bill received assent from the President of India. The Act has a retrospective effect from 19 September 2018.

The provisions of this Act describes that:

- 1) Pronouncement of instant triple talaq in any form except prescribed by the Holy Koran, by a Muslim husband upon his wife, either by words, written or spoken or in electronic form or in any other way whatsoever, shall be illegal and void.
- 2) Any Muslim husband who pronounces triple talaq upon his wife shall be punished with imprisonment for a term up to three years and shall also be liable to pay the fine.
- 3) A married Muslim woman upon whom triple talaq is pronounced by her husband shall be entitled to receive maintenance from her husband as a subsistence allowance for her and their dependent children, as may be determined by the CourtCourt.
- 4) In the case of pronouncement of talaq by her husband, a married Muslim wife shall be entitled to the custody of her minor children in such manner as may be determined by the CourtCourt.
- 5) An offence punishable under this Act of 2019 shall be cognizable if information in regards to the commission of the offence stated in the Act is given to an in charge of a police station or any other officer by the married Muslim Woman upon whom her husband pronounces triple talaq.
- 6) An offence punishable under this Act of 2019, with the permission of CourtCourt and on such terms and conditions as the CourtCourt may determine, shall be compoundable at the instance of the Muslim wife upon whom triple talaq is pronounced;
- 7) No person who is a
- 8) ccused of an offence punishable under this Act of 2019 shall be released on bail unless the CourtCourt, after receiving the bail application filed by the accused and after hearing the married Muslim Woman to whom triple talaq is pronounced, is satisfied that there are just and reasonable grounds for granting bail to such person.

What is our Agitation?

The real issue is reconciling the inherent pluralism and diversities of the Indian social order with a demand for uniformity. Promoting legal uniformity and

social justice without mitigating cultural diversity is by no means going to be a small task. Secularism and freedom of religion are two main controversial terms revolving around the issue of a uniform civil code. However, the truth of the issue is that a uniform civil code is not opposed to secularism, in letter or spirit.

Article 25 of the Indian Constitution, which guarantees the freedom of religion, expressly provides in clause (2) that State can control secular activities associated with religious practices. Marriage, succession and the like are matters of a secular nature and, therefore, the law can regulate them. Religion is a matter of individual faith and cannot be mixed with secular activities. The State can regulate secular activities by enacting a law.¹⁷ Article 25 confers the right to practice and profess religion, while Article 44 divests religion from social relations and personal law.¹⁸ As was observed in the case of *Mrs. Jorden Diengdish v. S.S. Chopra*,¹⁹

17. S.R. Bommai V. Union of India (1994) 3 SCC 1.

18. John Vallamattan v. Union of India AIR 2003 SC 2902.

19. AIR 1985 S.C. 935

'the object behind Article 44 of the Indian Constitution is to effect an integration of India by bringing all communities on the common platform in matters which are at present regulated by different personal laws, but which do not form the essence of any religion; for example, matters like divorce, maintenance Etc.'

Another primary argument against making a uniform code is that it would result in the sacrifice of the personal laws of minority communities in favour of that of a majority community. Thus, the constitutional mandate for a unified civil system of laws has been given communal overtones, overshadowing the intrinsic merits of the proposal, making the whole scenario unapproachable to any sensible policymaker. It is an area of extreme sensitivity, and the respective governments and the opposition parties have never been too keen to bring themselves to any controversy. They have long held that such reform of personal laws would be better done by pressure for such change within the communities rather than as an imposition from above.

However, this argument is groundless since what is aimed at is the making of a truly modern, secular, non-discriminatory and progressive code. It would naturally mean changes in the personal laws of all communities. An ideal civil code would mean a thorough reform and revamp of all the existing personal laws, not only any community.

Moreover, one glaring fact is that the opponents of uniform civil code conveniently overlook our legal system having features of uniform civil laws like the Special Marriages Act, India Contracts Act, Transfer of Property Act, Indian Evidence Act and the Civil Procedure Code. These laws provide excellent legal provisions and a structured framework for all commercial and civil matters and apply to all citizens, irrespective of religion, gender, caste or creed.

Conclusion

Drafting a unified civil code does not mean destroying different communities' cultural or religious identities. An illustration of what we are trying to achieve is when a Muslim woman is not unequal to her Hindu counterpart in maintenance, alimony and marital rights.

Therefore, what is required is identifying fair and equitable ingredients from the personal laws of different communities. According to a man of ordinary prudence, it should be a just, fair and proper code without any bias regarding religious or political considerations. Framing of truly secular and comprehensive legislation agreeable to all sections of the society would therefore necessitate consultation with the representatives of all communities, social agencies and human rights organizations; while taking due care to safeguard the interests of minorities.

In a survey conducted by the Times of India on 23 June 1995, 84% of the people came out in favour of the Uniform Civil Code. According to a survey published by India Today on 29 August 2005, 57% say India should have a Uniform Civil Code. In 2000 a U.N. convened the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) passed a resolution saying that India has betrayed its women and the principle to

which it became a signatory in 1953. It must enact a uniform family law. India, under CEDAW, is bound to ensure gender equality under national laws. Parliament must make a law divesting religion from personal laws.

Conclusively, if we follow the solid principles regarding secularism, national unity, integrity, social justice, equal opportunity to every civilian, Etc., we can maintain uniformity of civil code, and it should be emphasized. Such codes must be constructed to enforce equally over Hindu, Muslim, Christian, Persian, Jews or other religious followers. If it is not followed, then Article 14, which is related to equal rights, will be affected adversely.

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