

## Human Rights and the Uniform Civil Code

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Human rights can be defined literally as the rights that one has because one is human.<sup>2</sup> The Preamble of the Universal Declaration of Human Rights states that “*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*”.<sup>3</sup> The Preamble also states that “*disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.*”<sup>4</sup> From this, it can be inferred that human rights are of vital importance to the human race.

India has, for the most part, recognised that human rights and progress are inseparably linked. India has been a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

India’s commitment to human rights can also be seen in the Constitution. The Fundamental Rights that have been enshrined in the Constitution are, perhaps, the best example of this. The Directive Principles of State Policy and the Fundamental Duties are also indicative of the recognition and the importance that human rights have been given in India.

A mere recognition of the significance of human rights is, however, inadequate. India has experienced failures in the implementation of policies which safeguard certain human rights. One of the most notable of these is the failure to implement a uniform civil code.

Article 44 of the Constitution of India reads: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”<sup>5</sup> The uniform civil code can be understood as a branch of civil law relating to marriage, succession, maintenance and adoption.<sup>6</sup>

The relationship between human rights and a uniform civil code may not be apparent on the surface. However, there is a definite connection between the two. The implementation of a

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<sup>2</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, 7 (3<sup>rd</sup> Ed. 2013)

<sup>3</sup> Universal Declaration of Human Rights, Preamble, Dec 10, 1948.

<sup>4</sup> *Ibid.*

<sup>5</sup> Constitution of India, Article 44

<sup>6</sup> Krishnayan Sen, *Uniform Civil Code*, 39 *Economic and Political Weekly*, 4196 (2004)

uniform civil code can aid the State in granting and safeguarding many more human rights than it is currently in a position to do. The absence of a uniform civil code has facilitated many practices that are contrary to the philosophy of human rights.

It is to be noted that the absence of a uniform civil code protects a situation and a system which is, perhaps, more discriminatory towards women than towards any other section of society. There are many examples which can be used to illustrate this point.

The case of **Mohd Ahmed Khan v Shah Bano Begum and Others**<sup>7</sup> is the first of these examples. This was a case which dealt with a husband's liability to pay maintenance to his divorced wife under Muslim law. Though the Honourable Supreme Court came to a progressive and just conclusion which upheld the rights of women, the effect of the decision was diluted by the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>8</sup> which was enacted subsequently.

Article 7 of the Universal Declaration of Human Rights reads: "*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*"<sup>9</sup> When considered, it is clear that Muslim women in India are being denied the protection of the law which is readily available to the other women in India.

The ability of the Honourable Supreme Court to safeguard the rights of women is, unfortunately, limited. In the case of **Ahmedabad Women Action Group (Awag) & Ors v. Union of India**<sup>10</sup>, the Honourable Supreme Court declined to entertain writ petitions wherein it was the prayer of the plaintiff to have Muslim Personal Law which permits polygamy to be void and to have the practice of unilateral talaq as unconstitutional, amongst other things. This is another case in which Muslim women are being denied the protection of the law that protects women of other communities.

The problem is not limited to Muslim women. The Hindu Succession Act, 1956 did not originally grant daughters coparcenary rights. And this right was not granted until the year 2005.<sup>11</sup> The discrepancy between the different Personal Laws has also given rise to other problems that go against human rights. In the case of **John Vallamattom and Another v Union of India**<sup>12</sup>, the constitutionality of section 118 of the Indian Succession Act, 1865 was challenged on the grounds that it was discriminatory only against Christians. The Honourable Supreme Court ultimately struck the section down.

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights reads: "*The widest possible protection and assistance should be accorded to the family, which is the*

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<sup>7</sup> AIR 1985 SC 945

<sup>8</sup> K. Kannan, *Now is not the moment*, The Hindu, July 13<sup>th</sup>, 2016.

<sup>9</sup> Universal Declaration of Human Rights, Article 7, Dec. 10<sup>th</sup>, 1948.

<sup>10</sup> AIR 1997 SC 3614

<sup>11</sup> Utkarsh Anand, *Supreme Court sets 2005 cut-off on women right to ancestral property*, The Indian Express, Nov. 2<sup>nd</sup>, 2012

<sup>12</sup> AIR 2003 SC 2902

*natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”<sup>13</sup>*

Until the passing of the Juvenile Justice Act, 2000, only Hindus, Jains, Buddhists and Sikhs could legally adopt under the Hindu Adoption and Maintenance Act, 1956<sup>14</sup>. People belonging to other communities could only assume ‘guardianship’ of a ‘ward’.<sup>15</sup>

From the examples given, it can be safely concluded that the enactment of a uniform civil code is essential to extend the protection that human rights offer to all citizens of India. However, there are challenges to be faced before the uniform civil code can be implemented.

Briefly, there are two problems that must be resolved before the idea of uniform civil code can be accepted by the Indian people. Firstly, it can be safely assumed that there exists a general ignorance as to the exact meaning of a uniform civil code. It is, perhaps, because of this ignorance that there is a fear that a uniform civil code means an imposition of Hindu law on Non-Hindu communities. Secondly, there may be a general feeling of discomfort and discontent among the people who may fear that the implementation of a uniform civil code may undermine the purity of religion.

The Government must first tackle these two problems before making any attempt to secure a uniform civil code. One possible solution to both these problems would be to educate the people as to the exact meaning and effects of a uniform civil code. It is possible for a nation-wide campaign to be launched.

Additionally, the implementation of a uniform civil code will undoubtedly make ease the administrative burdens on the Government and, if successful, will be instrumental in national integration.

To conclude, no stone must be left unturned in the implementation of a uniform civil code in India. One the most important considerations behind the implementation of a uniform civil code is to place the State in a relatively stronger position to enforce human rights in India and to reiterate our nation’s commitment to upholding the philosophy of human rights and the spirit of the Constitution.

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<sup>13</sup> Article 10(1), International Covenant on Economic, Social and Political Rights, Dec 16<sup>th</sup>, 1966.

<sup>14</sup> Section 2(a), The Hindu Adoption and Maintenance Act, 1956.

<sup>15</sup> Deepak Kumar Verma, *Hindu Adoption Laws & and Interpretation by Different High Courts*, available at [www.nja.nic.in/2.%20Hindu%20Adoption%20Law%20and%20Judicial%20interpretation-%20Deepak%20KR.Verma.pdf](http://www.nja.nic.in/2.%20Hindu%20Adoption%20Law%20and%20Judicial%20interpretation-%20Deepak%20KR.Verma.pdf)