UNIFORM CIVIL CODE IN INDIA: AN ANALYSIS

Tanushree¹

INTRODUCTION TO UCC

Uniform Civil Code, a common code that connotes the idea of similar set of civil rules regardless of their religion, caste, sex etc. has now-a-days propounded a high-powered controversy in India. Uniform Civil Code (UCC) is the manifestation of contemporary progressive nation, which shows that the nation has been elevated from religion, race, caste, and sex and birth discrimination. UCC entreats to replace the personal laws based on customs of each religion with a common set governing each citizen. Such laws address four broad areas: Marriage, Divorce, and Maintenance & Succession. If implemented in true spirit, then these three words are sufficient enough to divide the country politically, religiously and socially. In India even after 69 years of independence people are still being dominated by the personal laws of their respective communities. The framers of the constitution with a view to achieve uniformity of law incorporated Article 44 that runs as follows: “The State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India.”² Uniform Civil Code is a term which has its roots from the concept of Civil Law Code.³ The purpose concealed in the uniform civil code is to eliminate the contradictions based on religious ideologies and promote the concept of national integration. All communities in the country would then be judged on a similar platform in civil matters and would not be governed by diverse personal laws.

Though Article 37 of the Constitution provides that directive principles of state policy are not enforceable by the Court of Law. But it does not reduce the importance of the directive principles. Just after Independence it was not feasible to impose a Uniform Civil Code on the citizens as per the circumstances. So this was the reason that the code has been covered under the directive principle of state policy.

¹ 4th Year BA LLB Student, Amity Law School, Lucknow
² V.N. Shukla, The Constitution of India, 308 (2001)
³ A civil code is a systematic collection of laws designed to comprehensively deal with the core areas of private law such as for dealing with business and negligence lawsuits and practices.
Also the preamble of Indian constitution is the mirror of constitutional spirit. It emphasizes to constitute India as a Sovereign, Secular, Democratic, Republic nation. It contains those elements which are the soul of the Constitution. It ensures Justice, liberty, and equality to the citizens and thereby promote solidarity while assuring dignity of the individual and unity and integrity of the nation.

So, in this context the importance of uniform civil code can be visualized. The makers of the Indian Constitution were convinced that certain amount of modernization is required before uniform civil code is imposed upon the citizens.

**HISTORY**

After India became independent Uniform Civil Code was a highly debated issue in the Parliament of India in the year 1948. On one side great personalities like Dr. B.R. Ambedkar, supported by other eminent nationalists like Gopal Swamy Iyenger, Anantasayam Iyengar, KM Munshiji and others were in favour of the Uniform Civil Code whereas it was strongly opposed by Muslim fundamentalists like Poker Sahib and people from other religions. The argument on UCC was heated when Constituent Assembly raised the idea of Uniform Civil Code in 1947 and was incorporated as one of the directive principles of the State policy by the sub-committee on Fundamental Rights and Clause 39 of the draft directive principles of the state policy provided that the State shall endeavor to secure for the citizen a Uniform Civil Code. The feud was that the different personal laws of communities based on religion, kept India back from advancing to nationhood and the Uniform Civil Code should be guaranteed to Indian people. The Chairman of the drafting committee of the Constitution, Dr. B.R. Ambedkar, said that, “We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession … and it is the intention of those who desire to have Article 35 as a part of Constitution so as to bring about the change.”

Earlier, during the rule of Congress party, it had assured Muslims to practice their Islamic personal Laws and thus the architects of the Constitution, compromised by including the enactment of a Uniform Civil Code under the Directive Principles of State Policy in Article-44 of the Constitution, i.e. it will be binding

---

Lok Sabha Secretariat, Constituent Assembly Debates Vol. III, 551, 23 Nov. 1948.

2 | Page  Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 9
on the State to adopt the Uniform Civil Code system rather it will only act as persuasive legal provision. Nehru said in 1954 in the Parliament, “I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through.”\textsuperscript{5} Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at an honorable compromise by placing it under Article 44 as a directive principle of state.

In the year 1955 Prime Minister Jawaharlal Nehru thought of codifying personal laws but it was obstructed by the orthodox elements, as it promoted monogamy, divorce and equal division of property between son, daughter and widow, adoption, maintenance to wife etc. but later Nehru was convinced and brought in the Hindu Code Bill in the same year. The major criticisms to the Code were that it did not touch upon the Muslim community and it was here that Nehru’s idea of secularism suffered a certain extent of lacuna. Therefore, a lesser version of Hindu Code was passed after a long opposition in the parliament between 1955-56 sessions. The BJP was the first party to promise the UCC if elected into power.

Presently Goa is the only state, which has the UCC. Goa’s uniform civil code happily co-exists with a variety of personal codes available to followers of particular faiths. Goa is the only state to have implemented the directive principle on the Uniform Civil Code and converted it into a law called the Goa Civil Code or the Goa Family Law. It is the set of civil laws that governs all the residents of Goa irrespective of the religion or the ethnicity to which they belong. But it makes available an option and underlines the point that a uniform civil code and personal laws do not represent an either/or choice and that the one does not mandate the obliteration of the other.

**SECULARISM, CONSTITUTION AND UNIFORM CIVIL CODE**

The spine of controversy revolving around UCC has been secularism and the freedom of religion enumerated in the Constitution of India under Article 25\textsuperscript{6} & 26\textsuperscript{7}. J. Reddy stated that the religion is the matter of individual faith and cannot be mixed with secular activities as


\textsuperscript{6} “(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

\textsuperscript{7} “Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law.”
secular activities can be regulated by the State.\textsuperscript{8} UCC is not opposed to secularism or will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society.

The conflict between secular and religious authorities over the issue of UCC eventually decreased, until the Shah Bano case, where then the Chief Justice of India J. Y.V. Chandrachud observed that ‘A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies’\textsuperscript{9}

The preamble of the Constitution states that India is a "secular democratic republic". A secular State does not discriminate against anyone on the ground of religion, it is only concerned with the relation between man and man and not with the relation of man with God. In India, positive secularism distinguishes spiritualism with individual faith. Positive secularism is a common doctrine of secularism accepted by America and some European states i.e. there is a wall of separation between religion and State. The reason is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with religion. Whereas, India has not experienced such stages and thus there is interference of State in the matters of religion so as to remove the impediments in the governance of the State.

The right to freedom of religion is guaranteed under Articles 25 and 26 of the Indian Constitution. Article 25 provides every person the freedom of conscience and the right to profess practice and propagate religion. It envisages power to the State to regulate or restrict any economic, financial, political or other secular activity, which may be linked with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion. Uniform Civil Code is not against secularism nor does it violate Article 25 and 26 of the Constitution. It is just that the Article 44 is based on the concept that there is no obvious link between religion and personal law in a civilized society. Marriage, succession etc. are matters of a secular nature and, therefore they cannot be chained down by the laws. No religion permits deliberate distortion. Implementation of Uniform Civil Code

\textsuperscript{8} S.R. Bommai v. Union of India, (1994)3 SCC 1  
\textsuperscript{9} Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945
will not and shall not result in interference of one’s religious beliefs relating, mainly to maintenance, succession and inheritance. The debate for the UCC, with its diverse implications and concerning secularism in the country, leads to one of the most controversial issues in 21st century.

**UCC AND ROLE OF JUDICATURE**

In the post-colonial India, the role of Judiciary in the implementation of uniform civil code is very appreciable. In fact it is the judiciary, which through its interpretations paved the way towards uniform civil code.

For the very first time in the case of *Mohd Ahmed Khan vs. Shah Bano Begum*\(^{10}\) pertaining to the liability of a Muslim husband to maintain his divorced wife beyond iddat period, who is not able to maintain herself, the Supreme Court held that Section 125 Cr. P. C which imposes such obligation on all the husbands is secular in character and is applicable to all religions.

In *Ms. Jordan Deignede vs. S.S. Chopra*\(^{11}\), D Chinappa Reddy, J. speaking for the court referred to the observations of Chandrachud, C.J. in Shah Bano’s case and observed as under: “The present case is yet another event which focuses on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of uniform civil code is exposed by the facts of the present case.

In the case of *Mrs. Zohra Khatoon v. Mohd. Ibrahim*\(^{12}\), A substantial question of law was raised and the High Court of Allahabad which cancelled the orders of the maintenance allowance passed by the Magistrate on the grounds the when the divorced proceedings start from the female side under the dissolution of Muslim Marriage Act 1939, in those cases wife cannot claim maintenance from her former husband neither under the Muslim law nor under Sec. 125 of Cr.P.C. Ultimately the Supreme Court overruled the decision of the High court on the ground that it is based on the wrong interpretation of the Clause1(b) of the explanation to section 125 under this clause the wife continues to be wife even though she has been divorced her husband or has otherwise obtained divorce and has not remarried.

---

10 AIR 1985 SC 945  
11 1985 AIR 935, 1985 SCR Supl. (1) 704  
12 AIR 1981 SC 1243
Similarly in the case of *Sarla Mudgil v. Union of India*\(^{13}\), J. Kuldip Singh also put emphasis on the need of uniform civil code and judgment delivered by him is again a step towards uniform civil code. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded. The Judges of various High Courts and Supreme Court became the main instrument for bringing important gradual legal developments which also put its impact on the question of uniform civil code.

**NEED FOR UNIFORM CIVIL CODE IN INDIA**

The need for uniform civil code has been felt for more than a century. India as a country has already suffered a lot in the absence of a Uniform Civil Code. The society has been fragmented in the name of religions, sects and sex. Even at present, in India, there are different laws governing rights related to personal matters or laws like marriage, divorce, maintenance, adoption and inheritance for different communities. The laws governing inheritance or divorce among Hindus are thus, very different from those pertaining to Muslims or Christians and so on. In India, most family law is determined by the religion of the parties concerned Hindus, Sikhs, Jains and Buddhists come under Hindu law, whereas Muslims and Christians have their own laws. Muslim law is based on the Shariat; in all other communities, laws are codified by an Act of the Indian parliament. There are other sets of laws to deal with criminal and civil cases, such as the Criminal Procedure Code, 1973 and the Indian Penal Code, 1862. The multifarious castes and creeds and their sets of beliefs or practices are bewilderingly confusing and nowhere is a scenario like in India, of various personal laws jostling together is allowed.\(^{14}\)

The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform

\(^{13}\) (1995) 3 SCC 635

code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. India has set before itself the ideal of a secular society and in that context achievement of a uniform civil code becomes more desirable. Such a code will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society. It will create a national identity and will help in containing fissiparous tendencies in the country. The uniform civil code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters.

According to the Committee on the Status of Women in India, "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code. Goa has shown the way and there is absolutely no reason for delay. A secular India needs a uniform civil code. To mark time is to march with the communalists.

CODIFICATION

The biggest and the most prominent obstacle in implementing the UCC, apart from obtaining a consensus, is the drafting. There is a lot of literature churned out on UCC but there is no model law drafted. General view of the people is that under the guise of UCC, the Hindu law will be imposed on all. And by far the possibility of UCC being only a repackaged Hindu law was ruled out by Mr. Atal Bihari Vajpayee (Prime Minister at that time) when he said that there will be a new code based on gender equality and comprising the best elements in all the personal laws. The UCC should carve a balance between protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious or political considerations.

A Bill on voluntary Uniform Civil Code is almost ready for introduction in the session of Parliament. A voluntary uniform civil code is a contradiction in terms. The moment it is made optional it ceased to be uniform. Any attempt to make the code voluntary or optional must be opposed. Instead of framing such optional civil code, the government would do well to take immediate steps to codify each set of personal laws incorporating therein the requisite reforms making them uniformly applicable to all the members of the concerned community. There is a great possibility of the UCC being abused, but this should not eschew the Parliament from enacting the UCC; the social welfare and benefits resulting from the implementation of UCC are far greater.\textsuperscript{16}

**UCC: GENDER JUSTICE**

Women empowerment in the major areas like social status, gender bias, health, security and empowerment are of urgent necessity. The Indian state has in fact encouraged codifying tribal customary laws. Article 44 expects from the State to secure a Uniform Civil Code for all citizens of India. There is no Uniform Civil Code in India but a Uniform Criminal Code exists. The Criminal law is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil law particularly in the matter of personal laws there is no uniformity. In *Mohammad Ahmed Khan v. Shah Bano Begum*, popularly known as Shah Bano’s case, the Supreme Court held that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” Though this decision was highly criticized by Muslim Fundamentalists, yet it was considered as a liberal interpretation of law as required by gender justice. However, in *Ahmadabad Women’s Action Group (AWAG) v. Union of India*\textsuperscript{17}, a PIL was filed challenging gender discriminatory provisions in Hindu, Muslim and Christian statutory and non-statutory law. This time Supreme Court became a bit reserved and held that the matter of removal of gender discrimination in personal laws “involves issues of State polices with which the court will not ordinarily have any concern.” The decision was criticized that the apex court had virtually abdicated its role as a sentinel in protecting the principles of equality regarding gender related issues of personal laws of various communities in India.

\textsuperscript{16} Available at http://www.ijesls.com/Need%20for%20Uniform%20Civil%20Code-%20Milind%20Gaur.pdf , (last visited on 11\textsuperscript{th} July, 2016)

\textsuperscript{17} AIR 1997 SC 3614.
The Apex Court pursued the same line in *Lily Thomas etc. v. Union of India*\(^\text{18}\) and others and held, “The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.”

The judiciary in India has taken note of the injustice done to the women in the matters of many personal laws. It has been voicing its concern through a number of judgments indicating the necessity to have uniformity in personal matters of all the citizens.

It is in this context that we need to understand the issue of the uniform civil code. The time has come to place personal laws of all religions under a scanner and reject those laws that violate the Constitution. Personal laws of all religions discriminate against women on matters of marriage, divorce, inheritance and so on. There is an urgent need to cull out the just and equitable laws of all religions and form a blueprint for a uniform civil code based on gender justice. The Hindu code cannot be applied uniformly to all religions. On the other hand, triple talaq would have to go, as would polygamy and all the advantages that accrue to Hindu undivided families in matters of property and inheritance.\(^\text{19}\)

**CONCLUSION**

A Uniform Civil Code sets the precedent for attaining true equality and egalitarianism. It will help in integrating India more than it has ever been since independence. Bringing in UCC cannot be a knee-jerk step but implementation of India's secularism could be made by enacting personal laws outside the purview of religion. Different personal laws for various communities creates unnecessary burden on the legal system. Bringing a Uniform Civil code would reduce that. It will also address all the loopholes present in different personal laws. Uniform Civil code is also a major step towards gender justice especially for Muslim women. Most of the personal laws have bias against rights of women, whereas, bias is not only against women but also operates against men. If all Indians have same laws governing them, then the politicians will have no chance of exploiting any community in exchange of

\(^{18}\) AIR 2000 SC 1650, at 668.

\(^{19}\) Shabana Azmi, Women, Stand Up For Your Rights, The Times of India, 7 July 2005
their votes. It will not only raise the bar of the legal system but also help in the progress of India as a nation.

The UCC is necessary because personal laws are inconsistent with our declaration "To constitute India into Socialist Secular Democratic Republic" and it is almost impossible to achieve the golden goals as set out in the Preamble of the Constitution without the UCC. The Government should draft a Common Civil Code with the opinion of Law Commission, National Human Right Commission, and National Commission for Women, Former Attorney Generals, Solicitor Generals and Judges of the Supreme Court and must implement the UCC in spirit of the Article-44 of the Constitution on priority. While our economic growth has been the highest in the world, our social growth has not happened at all. Socially and culturally, we have degraded to a point where we are neither modern nor traditional. Bringing the UCC would reduce and help in simplifying many technicalities and loopholes, present in existing personal laws. The concept of one nation, one law is more than a neat hashtag and goes back to the drafting of the Constitution. Every modern nation has it, and it is time that we have it too and achieve the grand vision which was envisioned at the time of framing our constitution.