

WILL UNIFORM CIVIL CODE UNITE INDIA?

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ABSTRACT

The Uniform Civil Code (UCC) calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under Article 44 of the Constitution, which lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

This issue has been at the center of political narrative and debate since the inception of the Constitution of India, however, has recently intensified debate and discussion after the Hon'ble Prime Minister of India strongly backed UCC in one of his speeches delivered on 27.06.2023.

(1)

This article, explaining the concept and history, discusses the need for UCC leading to a logically backed conclusion.

Keywords: Uniform Civil Code; UCC; Secular

According to the Preamble, the Constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a 'Sovereign, Socialist, Secular, and Democratic Republic' to secure to all its citizens 'Justice, Liberty, Equality and promote among them all Fraternity.' India was declared a 'secular' nation by 42nd Constitutional Amendment, 1976 thereby separating religion and state matters. Moreover, 'secularism' in India is defined to mean all the religions in India get equal respect, protection and support from the state. Currently, with a mix of different civil codes, citizens are treated differently by law and by courts based on their religion. The rights of Hindu women are far more progressive (and constitutional, by virtue of being gender-neutral and secular) than those of Muslim women, who are governed by Muslim Personal Law, which is based on Sharia law. All this though prevalent since ages, has recently intensified debate and discussion on the most controversial topic of the country - Uniform Civil Code (UCC).

A Uniform Civil Code is conceptualised as a set of laws that govern personal matters, including marriage, divorce, adoption, inheritance, and succession, for all citizens regardless of their religion. It aims to replace the existing diverse personal laws that vary based on religious affiliations.

The UCC can be traced back to the debates during the framing of the Indian Constitution. Some members of the Constituent Assembly, including Dr BR Ambedkar believed that a UCC was necessary to promote gender equality, secularism, and national integration. However, many other members including Nazirrudin Ahmad were against it, claiming that the religious laws of different communities should not be tampered with, without their consent.(2) The framers of the Constitution, recognizing the sensitivity and complexity of the issue, left it to the discretion of the government to implement a UCC by making it one of the Directive Principles of State Policy under Article 44. Article 44 states that "*The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.*" However, over the years, various governments have discussed and debated the implementation of a UCC, but it has remained a contentious and politically sensitive topic.

The Code became a flashpoint in Indian politics in 1985 during the Shah Bano case.(3) This was a controversial maintenance lawsuit in India, in which the Hon'ble Supreme Court delivered a judgment favouring maintenance being given to an aggrieved divorced Muslim woman under Section 125 of Code of Criminal Procedure, 1973. The judgement in favour of

the woman in this case evoked criticisms(4,5) among Muslims, some of whom cited the Qur'an to show that the judgement was in conflict with Islamic law.(6) And hence, the controversy about the extent of having different civil codes for different religions in India, was triggered.

Later, in 1995, Sarla Mudgal filed a writ petition(7) before the Hon'ble Supreme Court of India wherein the question for consideration was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code, 1860 (IPC). The court recognizing the need for UCC further held that:

"The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law - a decisive step towards national consolidation. Pandit Jawahar Lal Nehru, while defending the introduction of the Hindu Code Bill instead of a uniform civil code, in the Parliament in 1954, said "I do not think that at the present moment the time is ripe in India for me to try to push it through". It appears that even 41 years thereafter, the Rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments - which have come and gone - have so far failed to make any effort towards "unified personal law for all Indians". The reasons are too obvious to be stated. The utmost that has been done is to codify the Hindu law in the form of the Hindu Marriage Act, 1955. The Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 which have replaced the traditional Hindu law based on different schools of thought and scriptural laws into one unified code. When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India."

Years later in 2017, another important issue of triple talaq(8) was placed before the Hon'ble Supreme Court for consideration. Deciding the matter in favour of the petitioner, the apex court declared the practice of triple talaq as unconstitutional and violative of the dignity and equality

of Muslim women. It was also recommended that the Parliament should enact a law to regulate Muslim marriages and divorces.

Thus, in India, personal laws governing marriage, divorce, inheritance, and other such matters are based on religious texts and customs. The major religious communities in India, including Hindus, Muslims, Christians, and Sikhs, have their own distinct personal laws:

1. **Hindu Personal Law:** The Hindu personal laws are derived from ancient religious texts and customs. The Hindu Marriage Act, 1955 governs marriage and divorce among Hindus, while the Hindu Succession Act, 1956 deals with inheritance. Under the Hindu Succession Act of 1956, (which governs the rights of Hindus, Buddhists, Jains, and Sikhs) Hindu women have equal rights to inherit property from their parents and have the same entitlement as Hindu men.
2. **Muslim Personal Law:** Muslims in India follow the Muslim Personal Law, which is based on the Shariah. The Muslim Personal Law (Shariat) Application Act, 1937 regulates matters related to marriage, divorce, inheritance, and maintenance among Muslims.
3. For Christians, Parsis, and Jews, the Indian Succession Act of 1925 applies. Christian women receive a predetermined share based on the presence of children or other relatives. Parsi widows receive an equal share as their children, with half of the child's share going to the deceased's parents if they are alive.(9)

Though respect for every religion and its culture is evident from the multifaceted laws in our country, but the issue of sufferance of humanity, particularly women, due to different statuses being accorded to them under different laws, remains open-ended even after 75 years of independence. The right to live is part and parcel of human rights and denial of the same to a woman is one of the heinous violations which unfortunately is universal due to the extremely patriarchal and misogynistic nature of the society we live in. These societal norms are governed by our religious beliefs to a large extent as we allow these religious rules to govern our family life. A uniform civil code will help in changing these age old traditions that have no place in today's society where we do understand that women should be treated fairly and given equal rights.

Women's rights groups, advocating for UCC, have also affirmed that the issue of a uniform civil code is only based on the rights and security of women, regardless of sensationalism by religious conservatives and the press.(10)

Additionally, UCC will also ease out the legal situation in our country. The act of obtaining a divorce is civil in nature and is not covered by any criminal jurisprudence. However, matrimonial laws differ per religion. Further, no uniform procedure can be followed by the law enforcement agencies in matters pertaining to Maintenance, Inheritance, Custody of the Children etc. thereby making the process cumbersome. Accordingly, Article 14 of the constitution of India guaranteeing equality before law to every person is violated. With UCC in place, overlapping provisions of law can be avoided thereby providing some relief to the overburdened Indian judicial system by reducing the litigation load due to personal laws.

It may also be borne in mind that every effort of every citizen of any nation is always taken with the urge of growing and developing further. India and its citizens have also been striving hard with numerous policies/guidelines/education/infrastructure/human resource etc. in place, to become a developed nation. Uniform Civil Code would act as the ultimate step in this direction. It would not only accelerate national integration but help the nation to come out stronger.

Virtually all countries have uniform civil code or for that matter uniform law- civil or criminal. The European nations and US have a secular law that applies equally and uniformly to all citizens irrespective of their religion. The Islamic countries have a uniform law based on shariah which applies to all individuals irrespective of their religion. For these reasons Israel, Japan, France and Russia are strong today with their sense of oneness which we have yet to develop and propagate.(11)

CONCLUSION

The debate about Uniform Civil Code has been revolving around the term 'Secular' as stated in the Preamble of the Constitution of India. However, what is being overlooked is that India has been so constituted to secure to all its citizens 'Justice, Liberty, Equality and promote among them all Fraternity.' Considering the aforesaid issues of women discrimination,

violation of Article 14, lag in our efforts towards development and the international scenario of oneness, along with the non-implementation of constant judicial pronouncements to promulgate UCC, where do you think that secularism has secured that assured justice or liberty or equality, leave aside promoting fraternity.

As our Hon'ble Prime Minister, Shri Narendra Modi said: How could it be possible to run a family (the nation) with disparate laws for its different members (communities)? And the most disheartening fact is that others have always taken advantage of this friction within the country. Thus, divergent religious ideologies must merge and culminate into common and unified principles and objectives, adhering to the true spirit of secularism. Article 44 of the Constitution, though unenforceable but fundamental in the governance of the country, also points towards this direction.

I would thus, conclude by saying that the time was not ripe when Dr. Ambedkar wanted to push UCC through, but if not implemented after 77 years of independence, 77 years of development, 77 years of education, and 77 years of observance, the time ahead would be rotten and long gone. Let's not let anything or anyone rule the nation but oneness. Such future would bow down to you in gratitude.

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