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Uniform Civil Code in India – Is there a need for it?

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Introduction

The call for a Uniform Civil Code (UCC) has long featured in the political and legislative debates ever since before the days of formulation of the Constitution. Time and again, the Supreme Court has also been asserting the need for a UCC. Recently, Supreme Court described Goa (with a common family law) as a “shining example” where “uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights”. 21st Law Commission also submitted a consultation paper on Reforms in Family Laws in India.

A Uniform Civil Code administers the same set of secular civil laws to govern all people irrespective of their religion, caste, and tribe. The need for such a code takes in to account the constitutional mandate of securing justice and equality for all citizens. A uniform criminal code is applicable to all citizens irrespective of religion, caste, gender, and domicile in our country. But a similar code pertaining to marriage, divorce, succession, and other family matters has not been brought into effect. The personal laws vary widely in their sources, philosophy, and application. Therefore, there is an inherent difficulty and resistance in

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bringing people together and unifying those when different religions and personal laws govern them.

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 lies down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

Uniform Civil Code in the Constitution of India

Article 44 requires the state to secure for the citizens a uniform civil code throughout the territory of India²

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but at that moment it should remain voluntary, and thus the Article 35 of the Draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that

² Dr. J.N Pandey, Constitutional Law of India, 484, (Central Law Agency, 58th Edition, 2021)

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would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.³

The Contradiction

Article 37 of the Constitution itself makes it clear the DPSP “shall not be enforceable by any court”. Nevertheless, they are “fundamental in the governance of the country”. This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

Other constitutional provisions relating to religious freedom and secularism are:

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and morality.
- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare, and reform.
- Article 26- Right to establish and administer religious institutions.
- Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.

³ <https://www.business-standard.com/about/what-is-uniform-civil-code> (Visited on March 18,2022)

Historical Perspective of the Uniform Civil Code

The debate for a uniform civil code dates to the colonial period in India.

- **Pre-Independence**

The Lex Loci Report of October 1840- It stressed the importance and necessity of uniformity in the codification of Indian law, relating to crimes, evidence and contract. But it also recommended that personal laws of Hindus and Muslims should be kept outside such codification.

The Queen's 1859 Proclamation- It promised absolute non-interference in religious matters. So, while criminal laws were codified and became common for the whole country, personal laws continue to be governed by separate codes for different communities

- **Post-Colonial Era (1947-1985)**

During the drafting of the constitution, prominent leaders like Jawaharlal Nehru and Dr B.R Ambedkar pushed for a uniform civil code. However, they included the UCC in the Directive Principles of State Policy (DPSP, Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

Some of the reforms of this period were:

- **Hindu Code Bill**

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The draft of the Rau Committee report was submitted to a select committee chaired by B R Ambedkar that came up for discussion in 1951 after the adoption of the Constitution. While discussions continued, the Hindu Code Bill lapsed and was resubmitted in 1952. The bill was then adopted in 1956 as the Hindu Succession Act to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act reformed the Hindu personal law and gave women greater property rights, and ownership. It gave women property rights in their father's estate.⁴

- The Hindu Marriage Act,
- Minority and Guardianship Act,
- Adoptions and Maintenance Act,
- Special Marriage Act.

With triple Talaq abolished, Uniform Civil Code should be the next big thing

With the passing of the Triple Talaq Bill, the unjust practice of instant divorce by uttering the word ‘talaq’ thrice has effectively been consigned by the Modi 2.0 government to the dustbin of history. The outlawing of talaq-e-biddat marks not just an ideological victory for the BJP but a landmark breakthrough in furtherance of women’s empowerment in the changing political landscape of India. Besides vindicating its commitment to protecting the interests of women

⁴ <https://www.business-standard.com/about/what-is-uniform-civil-code> (Visited on March 18,2022)

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cutting across religious barriers, the BJP has demonstrated its willingness and preparedness to bring the people of the nation in matters of civil jurisprudence under the single umbrella of the Uniform Civil Code (UCC). This is in keeping with its poll promise and in alignment with provisions of the Constitution

Uniform Civil Code and Secularism

The principle of UCC essentially involves the question of secularism. There are various interpretations of secularism, and it is on the altar of all these interpretations, the UCC is both glorified and criticized. Some factions of our society consider the UCC anti-secular while some regard it as the harbinger of communal harmony and secularism.

- Many experts argue that personal laws are the part and parcel of religion and culture. Any interference with the personal laws would tantamount to interference with the very way of life of those who had been observing such laws from generation to generation.
- State must not do anything which hinders the religious and cultural ethos of the people.
- While others argue that Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26 of the Constitution of India.
- Article 44 of the Constitution of India is based on the concept that there is no necessary connection between religion and personal laws in the civilized society.
- It has also been argued that right to religious freedom did not extend to freeing secular dimensions of religion from the law of the land.

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Landmark Judgments

- **Mohd. Ahmed Khan vs. Shah Bano Begum⁵**

A 73-year-old woman called Shah Bano was divorced by her husband using triple talaq (saying “I divorce thee” three times) and was denied maintenance. She approached the courts and the District Court, and the High Court ruled in her favour. This led to her husband appealing to the Supreme Court saying that he had fulfilled all his obligations under Islamic law. The Supreme Court ruled in her favour in 1985 under the “maintenance of wives, children and parents” provision (Section 125) of the All-India Criminal Code, which applied to all citizens irrespective of religion. Further, it recommended that a uniform civil code be set up.

- **John Vallamattom Case⁶**

In this case the apex court held that “It is regrettable that Article 44 of the Constitution has not entered into force ... The above provision is based on the premise that there is no necessary link between religion and the law of persons in a civilized society. A common civil code will help the cause of national integration by removing contradictions based on ideologies”

- **Sarla Mudgal Case⁷**

⁵ 1985 AIR 945, 1985 SCR (3) 844

⁶ AIR 2003 SC 2902

⁷ (1995) 3 SCC 635

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In this case, the question 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 (IPC).

- **Daniel Latifi Case⁸**

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus, under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

Present Status

In October 2015, Supreme Court of India asserted the need of a uniform civil code and said that "This cannot be accepted, otherwise every religion will say it has a right to decide various

⁸ AIR 2001 SC 3262

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issues as a matter of its personal law. We don't agree with this at all. It has to be done through a decree of a court"

However, Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation.

Features of the Uniform Civil Code in Goa

- The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).
- Every birth, marriage and death must be compulsorily registered. For divorce, there are several provisions.
- Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.
- During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple.
- Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

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Need of Uniform Civil Code in India

1. Ensuring equality: Presently, in India, different communities are governed by different Personal laws like Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956 & Hindu Minority & Guardianship Act (1956). Similarly, Muslims, Parsis and Christians are governed by their own personal laws.

- There is not a single common personal law governing all its members. E.g.: for registration of marriage among Muslims, laws differ from place to place. It was compulsory in J&K (1981 Act), and is optional in Bengal, Bihar (both under 1876 Act).
- It can be argued that Personal Law system violates the principle of equality of the Constitution.
- Also, the Uniform Civil Code will act as a means to achieve clarity, simplicity, and intelligibility in personal laws.
- The Supreme Court in *Indian Young Lawyers Association v. State of Kerala*⁹ stated that personal/customary law comes under the ambit of Article 13. No body of practices can claim supremacy over the Constitution and its vision of ensuring the sanctity of dignity, liberty and equality.

2. Needed for national integration: Uniform Civil Code will separate religion from social relations and personal laws, ensuring equality and thus harmony in the society

⁹ (2017) 10 SCC 689).

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- It will help in integration of India, as a lot of the animosity is caused by preferential treatment by the law to certain religious communities. This could in time induce custodians of faith to look inwards and seek to codify and reform age-old personal laws in conformity with current modernizing and integrative tendencies

3. Gender Justice: UCC will promote gender justice by removing the inbuilt discriminatory provisions of personal laws.

- Under the Hindu law, the Mitakshara branch of law denied to a Hindu daughter a right by birth in the joint family estate, and this flowed logically from the fact that her place in the paternal family was only temporary as she was belonged to her husband's family on marriage
- Islamic law prescribes that generally a man's share of the inheritance is double that of a woman in the same degree of relationship to the deceased.
- Under Muslim law, the father is the sole guardian of the person and property of his minor child.

4. Freedom of Choice: A religion neutral personal law would encourage protection of couples in case of inter-caste and inter-religious marriages.

- Even Acts like the Special Marriage Act, 1954 permits any citizen to have a civil marriage outside the realm of any specific religious personal law.¹⁰

¹⁰ https://d19k0hz679a7ts.cloudfront.net/value_added_material/Uniform_Civil_Code.pdf (Visited on March 18,2022)

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Challenges and issues related to UCC in India

1. Existence of legal pluralism in civil laws: Indian laws do follow a uniform code in most civil matters – Indian Contract Act, Civil Procedure, Sale of Goods Act, Transfer of Property Act, Evidence Act etc. States, however, have made hundreds of amendments and therefore in certain matters, there is diversity even under these secular civil laws.

2. Contradictory provisions of the Constitution: Articles 371 (A) to (I) and the sixth schedule of the constitution of India provides certain protections or rather exceptions to the states of Assam, Nagaland, Mizoram, Andhra Pradesh, and Goa with respect to family law.

- While uniformity in personal laws is envisaged through the Article 44, the inclusion of personal laws in concurrent list indicates protection of diversity in personal laws.
- While framing a law it must be borne in mind that cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation.

3. Plurality and diversity: It has been argued that UCC threatens a pluralistic society like India, where people have confidence in their respective religious beliefs or doctrines that have been presented by different religions.

- In 2018, Law Commission of India opined that the Uniform Civil Code is “neither necessary nor desirable at this stage” in the country. The Commission said secularism

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cannot be contradictory to plurality. It only ensures peaceful co-existence of cultural differences.

- It is this plurality that also makes it difficult to evolve consensus on UCC.

4. Indian Secularism: The Supreme Court in *T.M.A Pai Foundation v. State of Karnataka*¹¹ reiterated that the essence of secularism in India is recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together to form a whole united India. The idea of UCC might not be inconsonance with the spirit of Indian secularism where multiple individual identities co-exist under the umbrella of the national identity.

5. Issue of Drafting the UCC: One of the biggest obstacles in implementing the UCC, apart from obtaining a consensus, is the drafting. There is no guideline or a vision document, whether UCC be a blend of all the personal laws or a new and common law adhering to the constitutional mandate.

6. Concerns of Minorities: There are impediments in adoption of the UCC when it comes to addressing Minority concerns, such as separatism, conservatism, and misconceived notions about personal laws. Most minorities feel a sense of insecurity, complete loss of identity and marginalization within Indian society and imposition of a majoritarian outlook on minority religions, if UCC comes into play.

¹¹ (2002) 8 SCC 481

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Conclusion and Suggestion

India is a socialist, secular, democratic, republic country. Diversity is the essence of India, but diversity in law is unjust. As the UCC would establish several laws to regulate individual situations affecting all people regardless of faith, this is both necessary and the cornerstone of genuine secularism. This dynamic shift would not only assist in ending gender-based oppression but would also strengthen the nation's mainstream fabric and advance unity. There is a need to alter our social framework, which is rife with inequalities, divisions, and other factors that conflict with our Fundamental Rights.

With the passage of time, the necessity for a UCC for all citizens, regardless of religion, has arisen, ensuring the protection of their critical and constitutional rights. Finally, the lack of a standard civil code is damaging to the aim of achieving true democracy, and this must change.