

## Need of Uniform Civil Code in India: An Analysis

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### ARTICLE DETAILS

#### Article History

Published Online: 05 February 2018

#### Keywords

India, Personal laws, Religion,  
Secularism, Survey, Uniform Civil  
Code

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### ABSTRACT

*In an country of a million customs, culture and communities like India, personal law have arisen as one of the key factors of controversy among the general population. The necessity for a Uniform Civil code in India has been analyzed and argued a few times despite everything it stays a standout amongst the most controversial issues noticed in our Constitution. A Uniform Civil Code shows the possibility of same arrangement of common rules or civil rules for the citizens independent of their religious belief are they Hindus, Muslims or Christians. The common regions secured by a civil code contain individual status, rights identified with procurance and administration of property and marriage, adoption and dissolution. The need for a Uniform Civil code in India has been talked about and argued many times and it still remains one of the most debatable issues remarked in our Constitution. The uniform civil code would mean the codification of laws pertaining to all citizens, be they Hindus, Muslims or Christians. Indian constitution Article 15 lays down a guarantee to every citizen that no discrimination shall be made on any ground and also authorizes state government to make special provisions for women and children. Article 44 provide for uniform civil code for the citizens throughout the territory of country. Republic of India already has uniform criminal code and civil laws which includes Contract law, Civil Procedure Code, Transfer of property Act etc. Thus UCC really referred to personal laws in India. All the Indian personal laws all find their origin in ancient religious texts. All of them in varying forms and degrees discriminate against woman vis-à-vis the men within each community. UCC has been incorrectly posited as an attack on religion and religious identities and bigger but quitter voice of gender justice is dispelled resulting in uncertainties and carries on discrimination. UCC administers the equal set of secular civil laws to govern all citizens disregarding of their religion, caste and tribe. Such codes are well in place in most of the countries. But now in India personal laws are the main cause of communal conflict among people.*

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### INTRODUCTION

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.” Uniform Civil Code is a term which has its roots from the concept of Civil Law Code. 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.<sup>1</sup>

Though directive principles of state policy are not enforceable by Law.<sup>2</sup> But it does not decrease the significance of the directive principles. After Independence it was not possible to impose a Uniform Civil Code on the citizens as per the conditions. So this was the cause that the code has been sheltered under the directive principle of state policy. Preamble of constitution of India is the reflected the constitutional spirit. It emphasizes to India as a Sovereign, Secular, Democratic, Republic state. It contains those fundamentals which are the soul of the Constitution. It ensures Justice, liberty, and equality to the people and thereby uphold solidarity while assuring dignity of the person and unity and integrity of the country. So, in this perspective the significance of uniform civil code can be apprehending. The founders of the Constitution were convinced that some time is required before uniform civil code is imposed upon the people of India.

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<sup>1</sup> Tanushree, “Uniform Civil Code In India: An Analysis” Vol. 2 Issue 9, 1 JCIL

<sup>2</sup> The Constitution of India, art. 37

## HISTORICAL BACKGROUND

Uniform Civil Code was an abundantly talked about issue in the Parliament of India in 1948, after India got Independence. On one hand famous identities like Dr. B.R. Ambedkar, bolstered by prominent patriots like KM Munshiji, Gopal Swamy Iyenger, Anantasayam Iyengar and others supported the usage of the Uniform Civil Code; it was unequivocally contradicted by Muslim fundamentalists like Pocker Sahib and individuals from different religions. Prior, the Congress Party (which was in power during that period) had given a confirmation that it would permit Muslims to rehearse Islamic personal Law and in this manner the designers of the Indian Constitution, found a trade off by including the establishment of a Uniform Civil Code in the Directive Principles of State Policy in Article – 44 of the Constitution, i.e. it will tie on the State to receive the Uniform Civil Code framework rather it will just go about as influential legitimate provision.<sup>3</sup> Prime Minister Jawaharlal Nehru in the year 1955 considered classifying Personal laws however was confronted with resistance from the devout components. Be that as it may, Nehru was persuaded about it and acquired the Hindu Code Bill in 1955. At the point when the level headed discussion was seething on the Hindu Code Bill in Parliament in May 1955, an inquiry was raised by numerous individuals from the Parliament that is the reason just arranges Hindu ceremonies and traditions and not those of Muslims.<sup>4</sup> The reaction from Nehru and his law pastor was that Muslims were not prepared for changes. One of the parts Kripalani had said, "It is not the (Hindu) Mahasabhites who alone are communal; it is the government also that is communal, whatever it may say. It is passing a communal measure. I charge you with communalism because you are bringing forward a law about monogamy only for Hindu community. Take it from me that the Muslim community is prepared to have it but you are not brave enough to do it. If you want to have (provision of divorce) for Hindu community, have it; but have it for the Catholic community also."<sup>5</sup>

## PERSONAL LAWS IN INDIA

India is a country of million customs and communities. India is home to many famous religions and cultures in the world. Throughout India's history, religion has been an important part of the country's culture. Religious diversity and religious tolerance are both established in the country by the law and custom India is a country that has secularism enshrined in its Constitution yet there is a contradiction in this whole concept of secularism, particularly when it is interpreted in the personal laws of its citizens. It becomes a confusing melting pot when Hindus, Muslims, Christians and Parsees have different personal laws pertaining to marriage, adoption, guardianship, divorce, succession and so on. Each community in India has their own personal laws in case of marriage and divorce. These religious communities co-exist as part of one country yet the family laws in India differs from one religion to another. The reason is that the customs, social usage and religious interpretation of these communities as practiced in

their personal lives depend hugely on the religion they were born in and that which they practice in the Indian society. The codified personal laws relating to marriage, divorce, property and inheritance are:

- ✓ The Indian Christian Marriage Act of 1872 (applicable to whole of India except areas of erstwhile Travancore- Cochin, Manipur and Jammu & Kashmir),
- ✓ Anand Marriage Act, 1909 (For Sikh marriages),
- ✓ Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-Cochin areas),
- ✓ Muslim Personal Law (Shariat) Application Act, 1937 (making Shariat laws applicable to Indian Muslims),
- ✓ The Parsi Marriage and Divorce Act, 1937
- ✓ Hindu Marriage Act, 1955 (applicable to not merely Hindus, Buddhists and Jains but also to any person who is not a Muslim, Christian, Parsi or Jew, and who is not governed by any other law),

## CONCEPT OF UNIFORM CIVIL CODE

A uniform civil code (UCC) administers the same set of secular civil laws to govern all people irrespective of their religion, caste and tribe. This supersedes the right of citizens to be governed under different personal laws based on their religion or caste or tribe. The common areas covered by a civil code include laws related to acquisition and administration of property, marriage, divorce and adoption. Such codes are in place in most modern nations. The need of UCC is inscribed in Article 44 in Part IV of constitution as Directive Principle of State policy, since it cannot be enforced by courts it's a non-judiciary rights.<sup>6</sup>

The expression is combination of three terms Uniform; Civil; Code. Uniform means 'same in similar conditions', Civil derived from Latin word 'civilis' means 'citizen'; when it is used as adjective of law it means 'pertaining to private rights and remedies of a citizen'; Code means codified laws'. Indeed in legal regime, UCC is confined to having uniform family code for every member across the communities i.e. Hindu, Muslim, Christian, Parsi or Jews residing in India to achieve the goal embodied in the Constitution of India which solemnly resolved to constitute India into Sovereign, socialist, secular, democratic and republic. Thus the concept has two aspects firstly, to have uniform law for all communities; secondly, similar laws for all and similarity should be regarding equality and gender justice.<sup>7</sup>

The UCC is conceived as part of secularization of personal laws without shedding religious identities. Uniform civil code of India is a term referring to the concept of an overarching Civil Law Code in India. The continuing confusion as to what a uniform code is and how it would impact on the power structure and right to faith, is a commendable effort at viewing the debate from a gender justice perspective. Historically, women as a class suffered discrimination; this is attributed, inter alia, to feudalism and patriarchy. Discriminatory customs with religious sanction evolved through ages have been left untouched except in parts, during the colonial rule.

<sup>3</sup> Basu, D.D. (2009, 20th Edition) *Introduction to the Constitution of India*, New Delhi, Universal Law Publishing company

<sup>4</sup> Term Paper Warehouse, Uniform civil code (2016), <http://www.termwarehouse.com/essay-on/Uniform-Civil-Code/309692>

(last accessed on 21st January 2018).

<sup>5</sup> Verinder Grover, *Political Thinkers of Modern India: J.B. Kripalani* (Deep & Deep Publications 1993), (last accessed on 21st January 2018).

<sup>6</sup> Dr. Saroj Bohra, "Uniform Civil Code, Women Empowerment And Gender Justice" Volume 3 Issue 2, 11, *SAJMS*

<sup>7</sup> *Supra*, Note 7.

Indian Prime Minister Mr. Narendra Modi stated that “In today’s world, it is important that women get equality, independence and the right to take life’s decisions. If we are keeping pace with the times in other things, we should also feel the aura of the 21st century in such matters. I would suggest that intellectuals and leaders of society hold discussions regarding this. It is important that during this drill, the ideas and traditions of one particular class or individual should not be imposed on another particular class or individual”.<sup>8</sup>

### CONTROVERSY ON UNIFORM CIVIL CODE

It will likewise make the detachment of the State from the religion more complete and important. The personal laws of all including Hindus can be changed opportune. In alluding personal laws of all religion we can see the male predominance. The issue of personal laws and the Uniform Civil Code was thoroughly immersed in conflictual communal political matters. The 1980s were a time of developing emergency in India. The mainstream agreement had separated and public clashes were heightening, with both dominant part and minority fundamentalism on the ascent. Pratibha Jain recommends revising the Constitution as another option to the uniform civil code.<sup>9</sup>

In India personal laws are the fundamental driver of common clash among individuals. One of the fundamental issues with the nonappearance of a Uniform Civil Code appropriate all through India is that it conflicts with the idea of correspondence which is one of the essential precepts of our Constitution. By having diverse personal laws for various religions we are, it might be said undermining the integrity of the common ethos of India. A Uniform Civil Code will likewise disentangle the lumbering lawful procedures required with the matters administered by personal laws. It will likewise go far in promoting the reasons for secularism, correspondence and national unification. In any case, it is essential to investigate the other side moreover. Still, time is not developing for the execution of the Uniform Civil Code. Polarization in the society along religious lines is still especially alive in our nation. The demolition of mosques and sanctuaries, common uproars are clear pointers towards the way that India is yet to accomplish the level of a steady and develop mainstream democratic system. On the off chance that the Uniform Civil Code is introduction in such a society, it might prompt further complexities. Besides, for Indians, religion is not an easygoing piece of their own life. Here religion assumes an essential part in the lives of the vast majority of the general population.

Subsequently the presentation of the civil code ought to be a well-thoroughly considered and watchful procedure. Another contention against the Uniform Civil Code is that its enforcement will be an infringement of Fundamental Rights conceived by the Constitution. Fundamental Rights are legal rights and are viewed as the most vital rights ensured by the Constitution. Article 26(b) says, “Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.”<sup>10</sup> Those individuals who contend against

the Uniform Civil Code are of the feeling that for adherents, matters like marriage, succession and divorce are religious issues and the Constitution ensures opportunity of such exercises and along these lines the Uniform Civil Code will be an infringement of that.

This issue has as of now involved extraordinary civil argument as the Supreme Court has perceived that succession, marriage and so forth matters of a secular characteristic can't be brought inside the certification revered under Article 25 and 26 of the Constitution. While conveying the judgment on the Indian Succession Act, Section 118, the Supreme Court was clear cut in attesting that the privilege to tail one's personal law is not a Fundamental Right. Their contention is that this code will influence the religious flexibility of minorities. They guarantee that the notions of the minorities are not considered while executing a precedent based law (common law). There are political parties and pioneers who are constantly energetic to capture such issues to enhance their vote banks. We should depoliticize the uniform civil code.<sup>11</sup>

### UNIFORM CIVIL CODE AND ROLE OF JUDICIARY

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<sup>12</sup> 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 Deigndeh vs. S.S. Chopra<sup>13</sup>, 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 Khaton v. Mohd. Ibrahim<sup>14</sup>, 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.

<sup>8</sup> *Supra*, Note 7.

<sup>9</sup> <http://indianexpress.com/article/research/shariat-muslim-personal-law-sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081/> (last accessed on 21st January 2018).

<sup>10</sup> Gajendragadkar, P.B. (1971), *Secularism and the Constitution of India*, Bombay University Press (last accessed on 21st January 2018).

<sup>11</sup> GOVERNMENT OF INDIA LAW COMMISSION OF INDIA *Laws on Registration of Marriage and Divorce – A Proposal for Consolidation and Reform* (2008)

<sup>12</sup> AIR 1985 SC 945

<sup>13</sup> 1985 AIR 935, 1985 SCR Supl. (1) 704

<sup>14</sup> AIR 1981 SC 1243

Similarly in the case of *Sarla Mudgil v. Union of India*<sup>15</sup>, 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.<sup>16</sup>

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 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.<sup>17</sup>

### CONCLUSION

As a conclusion I would say that a mainstream India needs a uniform civil code and it can be said that the mere three words and the country breaks into frenzied celebration. This uniform civil code has social, political, and religious angle. The Uniform Civil Code would carve a harmony between protection of fundamental rights and religious ideology of people. The Uniform Civil Code can be effectively presented simply in the wake of accomplishing enhanced levels of proficiency, awareness on different socio-political issues, edified dialogs and expanded social portability. A definitive point of improving uniform common code ought to be for guaranteeing equity, solidarity and integrity of the country and equity both men and women.

In a recent case *Shayara Bano v. Union of India* and others<sup>18</sup> Apex court observations tells us that there is a dire need to Uniform civil code to the whole of the country and BJP government should work on this issue. It's a right time to work on this issue.

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<sup>16</sup> Available at <http://www.ijesls.com/Need%20for%20Uniform%20Civil%20Code-%20Milind%20Gaur.pdf>, (last accessed on 23<sup>rd</sup> January 2018).

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<sup>18</sup> Triple Talaq Case

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