

# UNIFORM CIVIL CODE<sup>1</sup>

## INTRODUCTION

India has undoubtedly gone through various glorious and tragic moments, in its 72 years of independence. It is claimed to be a secular country and every citizen secures its right to practice any religion they want to, and the constitution guarantees them this. It further means that the state will not be dependent on any kind of religious institutions for taking decisions of the state, it will not interfere with the religious matters and the religion will not interfere with the efficiency of the state. But due to secularism, there has been a misuse of personal laws through the ages for selfish purposes, in the country. Article 44 of the Directive Principles in the Constitution says, the “State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.” The objective of this endeavour should be to address the discrimination against vulnerable groups and harmonise diverse cultural practices. The stand taken by B.R. Ambedkar in the Constituent Assembly debates has survived the years. Dr. Ambedkar had said a Uniform Civil Code is desirable but for the moment should remain voluntary.<sup>2</sup> The implementation of the same brings pros and cons with it. Article 25 & 26, i.e. the Right to practice any religion being as one of the main pillars of our constitution would need to be scrapped off or amended. Also, if the implementation of the Uniform Civil Code is done, then it may lead to the disintegration of the nation and this would lead to the breakdown of the peace and harmony among the people. Because India is the biggest democracy in the world and has the highest level of diversified population. So, to resolve this issue a flexible law is the need of an hour rather than a rigid one. Therefore, this paper tries to evaluate the entire dialogue around Uniform Civil Code and the arguments on its necessity and the various doubts on its nature.

Religion in India has been serving as the foundation of culture in India but on the contrary has enormous effect on Indian politics and society. In India religion is the way of life. It is an integral part of the Indian constitution and tradition as well. The Law Commission of India notes that the tracts of the Constituent Assembly debates reveal a lack of consensus on what a potential uniform civil code would entail. While many thought the Uniform Civil Code would coexist alongside the personal law systems, others thought that it was to replace the personal

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<sup>1</sup> Srishti Ray, National Law University and Judicial Academy, Assam.

<sup>2</sup> <https://www.thehindu.com/news/national/what-is-debate-on-uniform-civil-code-all-about/article24903560.ece>

law. There were yet others who believed that the Uniform Civil Code would deny the freedom of religion. It was this uncertainty that led it to be included in the Directive Principles of State Policy rather than the chapter on Fundamental Rights in the Constitution. The Supreme Court missed an opportunity to decide on this issue in 2017 when it outlawed triple talaq without addressing the core issue: whether personal law practices should prevail over the fundamental rights of life, dignity and non-discrimination. The Constitutional Bench's judgment was the product of a 2015 decision of a two-judge Bench of the court to take *suo motu* cognisance of the discriminatory practices against Muslim women. The Bench thereby pointed out that it had been 30 years since the court, in the Shah Bano case, urged the government to frame a common code to "help in the cause of national integration." The Constitution Bench's judgment came, about a year after the Law Commission, in October 2016, published a "questionnaire" to test the waters on the Uniform Civil Code. It basically wanted to see whether the nation was ready for it, or not. The questions included, "what measures should be taken to sensitise society to a common code or codification of personal law," and would the Uniform Civil Code ensure "gender equality."

Further, in the Shah Bano case, the court lamented that, Article 44 remained a "dead letter." Chances are that it may continue to remain so. In its consultation paper, in 2018, the Law Commission chose codification of personal laws over the Uniform Civil Code as a way to end discrimination within religions. Codification of various practices and customs would make them 'law' under Article 13 of the Constitution. Thus, any 'law' that comes under Article 13 should be consistent with the fundamental rights, the Law Commission has reasoned. This would protect the plurality of religions, too, and may be the way forward for the near future. In fact, the Law Commission has suggested in no uncertain terms that the Uniform Civil Code is "neither necessary nor desirable at this stage in the country." It also said that a unified nation does not necessarily need to have "uniformity."

As it has already been said, India is a country of various cultures, various religions, and people have been governed by their personal laws since time immemorial. There are different personal laws for different religions in the country, like for Hindus, there is the Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act, etc. to govern marriage, inheritance, adoption, etc. Muslims and Christians are governed by their own personal laws, to govern their marriage, succession, etc. Separate laws because difference in culture, practices, etc.

## **HISTORICAL BACKGROUND**

The debate for a Uniform Civil Code dates back to the colonial period. The Lex Loci report of 1840 emphasized the necessity of codification in Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification. According to their understanding of religious divisions in India, the British separated this sphere which would be governed by religious scriptures and customs of the various communities (Hindus, Muslims, Christians and later Parsis). These laws were applied by the local courts or panchayats while dealing with regular cases involving civil disputes between people of the same religion; the State would only intervene in exceptional cases. Thus, the British let the Indian public have the benefit of self-government in their own domestic matters with the Queen's Proclamation of 1859 promising absolute non-interference in religious matters. The personal laws involved inheritance, succession, marriage and other religious ceremonies. The public sphere was governed by the British and Anglo-Indian law in terms of crime, laws of contract and evidence, all this applied equally to every citizen irrespective of their religion. The Muslim Personal law or Sharia law, was not as strictly enforced as compared to the Hindu law. It had no uniformity in its application at lower courts, and was severely restricted because of bureaucratic procedures. This led to the customary law, which was more discriminatory against women, to be applied over it. Women, mainly in northern and western India, were restrained from property inheritance and dowry settlements, both of which the Sharia provides. Due to pressure from the Muslim elite, the Sharia law, 1937 was passed which stipulated that Indian Muslims would be governed by Islamic laws on marriage, divorce, adoption, succession, maintenance and inheritance.

## **THE ISSUE OF DIVERSITY**

As women's organisations and others have repeatedly pointed out, personal laws governing different communities in India have one common feature in them-they are all gender-biased. For instance, the law pertaining to succession among Hindus is unequal in the way it treats men and women. A truly modern, secular, non-discriminatory and progressive code would, therefore, mean changes in all personal laws. The concept of the "Hindu undivided family", at least so far as it pertains to succession, would also have to undergo a change under a uniform civil code. Similarly, Muslim, Christian and other personal laws too would have to change. This also explains why historically changes in personal law have been resisted not just by one community, but also by the ruling orthodoxy in all of them. A divorced Muslim woman is

entitled to maintenance from her husband during the period of iddat, after that Muslim personal law though nowhere expressly permits maintenance after divorce, but it also does not prohibit, specifically or impliedly, it anywhere. The interpretation of the Holy Quran shows, that Islam, calls for providing maintenance to a divorced woman on a reasonable scale, and this is a duty of every righteous god-fearing person.

The reason that it has been difficult to implement Uniform Civil Code in the country, is because most parties have held the view that the reform of laws pertaining to the personal domain is better done by pressure for such change from within communities rather than as an imposition from above. Further, for historical reasons, the demand for a Uniform Civil Code has acquired communal overtones which have certainly overshadowed the innate merits of the proposal. To put the delay in perspective, however, it should be added that Article 44 of the Constitution is by no means the only directive principle of state policy to have not been implemented more than half a century after it was laid down. Most directive principles in the country continue to remain pious doctrines rather than the law of the land.

### **UNIFORM CIVIL CODE v. SECULARISM**

The Preamble of our Constitution states that India is a secular republic, which necessarily means that the state has no religion. In *S.R. Bommai v. Union of India*, as per Justice Jeevan Reddy, it was held that religion is a matter of individual faith and cannot be mixed with secular activities. Secular activities can only be regulated by the State, by enacting a law. Articles 25 and 26 of the Indian Constitution guarantee the right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate and restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. Uniform Civil Code 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 civilised society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion. The Uniform Civil Code will not and shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. This means that under the Uniform Civil Code a Hindu will not be

compelled to perform a nikah or a Muslim be forced to carry out saptapadi. But in matters of inheritance, right to maintenance, property and succession, there will be a common law.

In India people find it extremely difficult to adapt to certain changes and when it comes to religion, it defines the way of life, people connect with their religion. People find it difficult to realise the fact that people make religion and it is defined by them and not the opposite. Thus, there is a need for a Uniform Civil Code which would govern and regulate the behaviour of people of all religions and not any particular section of the society. Therefore, the Uniform Civil Code shall aim to strike a balance between the protection of fundamental rights of an individual and religious principles of the different communities existing in India. Some legal experts argue that progressive law is welcomed but a suitable atmosphere must be created in which all sections feel secure enough to sit together and cull out the most progressive of their personal laws. But this can be answered by an example of Hindu law. When the Hindu Code Bill, which covers Buddhist, Jains, Sikhs as well as different religious denominations of Hindus, was notified, there was a lot of protest. And the then Law Minister, Dr. Ambedkar, had said, that for India's unity, the country needs to have a codified law. In a similar fashion, the Uniform Civil Code can be implemented, which will cover all the religions, whether major or minor, practiced in India and any person who comes to India, has to abide by the Code.

Very recently, a PIL was filed by Ashwini Kumar Upadhyay, a lawyer and a BJP member, that was quashed by the three-judge bench at the Supreme Court led by Chief Justice T S Thakur. The apex court's observed that enacting a common law can only be in the "realm of hope and expectations" but a mandamus (directive) cannot be issued to the government for the same. The bench, also comprising of Justices A K Sikri and R Bhanumathi, observed that it is for a person, aggrieved over violation of rights and discrimination due to a personal law, to move the court and somebody from a different community or religion cannot seek a common code alleging vices. "The law is well-settled on this issue. We have taken a view that these are decisions to be taken by the Parliament. How can we issue a mandamus in a matter like this? We can understand your commitment to achieving the constitutional goal but this cannot be done through a mandamus from the court," the bench told senior advocate Gopal Subramaniam.

## **CONCLUSION**

At the end of the day, a Uniform Civil Code can only emerge through an evolutionary process, which preserves India's rich heritage of which all personal laws are equal constituents. Many believe that if a Uniform Civil Code is enacted or implemented, there are chances of communal

violence and tension which shall lead to further disintegration of the society and hence, the country at large. When it comes to setting a said standard to Uniform Civil Code, it will be difficult to decide which law shall prevail over the other. Secondly, it would be extremely difficult to cover every aspect of personal law. When it comes to setting a standard of UCC, the problem that arises is that, which law will prevail over the other. In India religion is not just the way of life but is considered as something supreme and sacred. Implementation of Uniform Civil Code would not be warmly accepted by the people, the major reason being the diversity of the country. Thus, we personally feel that codification of Uniform Civil Code is of secondary value, with the priority being an amendment in the various personal laws. As stated before, Pandit Nehru said that Uniform Civil Code should only be implemented in modern India. Though India is on the verge of modernisation, the aspects such as religion which are retrospective in nature should only be dealt with, by keeping in mind the diversity and religious autonomy of the country.

Two questions need to be addressed which are being completely ignored in the present din around UCC. Firstly, how can uniformity in personal laws are brought without disturbing the distinct essence of each and every component of the society. What makes us believe that practices of one community are backward and unjust? If one does not address these questions with gravity and depth, then we would commit the same horrible mistake of the Americans who considered the indigenous population as savages, needed to be liberated from their customs and rescued by the progressive, civilised norms of Christianity. The second question is that whether uniformity has been able to eradicate gender inequalities which diminish the status of women in our society? This question is interlinked with the previous question. The definitions of inequality may differ from community to community. It is necessary to determine the layers of gender injustices and inequalities that work separately in one society than in the others.

The personal law of one society, without a doubt are dotted with many aspects which are contradictory to the sense of gender equality existing in that society. The first step therefore is to eradicate those unjust practices which are endemic to that specific society. Instead of hurriedly creating a uniform definition of injustice and inequality, which is the dominant point of view, it is necessary that all these societies first recognise the definitions of inequality and injustice within their peculiar sphere of life. Otherwise, what is happening is that these societies become defensive against the demands of uniformity and injustices within their communities are rendered invisible. This positive side of the debate on UCC time and again reminds the

people to tend to the diseases in their personal law system and adjust them to the contemporary times, by taking inspirations from another community which might be more progressive in some aspect. It must never be forgotten that all this is a slow process and any undue haste would only result in failure rather than the desired outcome.

