

UNIFORM CIVIL CODE: THE INDISPENSABILITY AND THE ABSURDITY¹

INTRODUCTION

India is a diverse country. Here, sundry systems of “personal law” prevail. The Hindu system is predicated on the antediluvian Sanskrit texts of Dharmashastra. The Muslim system is predicated on Quran and other texts. There are matrimonial laws of Christians and Parsis and the Indian Succession Act, 1925 for all Indians except Hindus and Muslims.

Hindu law has by and large been secularized and modernized by statutory enactments. On the other hand, Muslim law is still primarily unmodified and traditional in content and approach. The present-day family law is thus a maze and so is very confusing. In such a situation, there exists a constant need for a uniform law. But enactment of such a law is quite a challenge. As pointed out by Hussain Imam in the constituent assembly debate:²

India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law?

However Dr B.R. Ambedkar denied his claims by saying that India already has a uniform law except in the fields of marriage and divorce. Thus it’s too late to ask such a question. He stated:³

We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that

¹ Shashwat Bhutani and Meyank Pandey, Faculty of Law, Allahabad University.

² Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

³ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

At the same time, he added a remark by saying that, in the beginning, this code can be made applicable to only those who accept to be governed by the same.⁴

... Article 35, which merely proposes that the State shall endeavor to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.

The issue of Uniform civil code again came in light by the recent consultation paper of Law Commission of India, published on 31 August 2018, in which it has recommended that Uniform civil code is neither necessary nor desirable at the present moment. The commission justified its decision by saying:⁵

Resolution of this conflict does not mean the abolition of difference. This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are now moving towards recognition of difference, and the

⁴ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

⁵ Draft of Consultation paper available at:

<http://www.lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>. last visited on May 15, 2019

mere existence of difference does not imply discrimination, but is indicative of a robust democracy.

Thus, lawmakers have to be very conscious while framing a law on such a sensitive issue. At one hand they have to ensure that freedom of religion and rights of minority communities are forfended and on the other hand they have to bring uniformity in personal laws, ensuring simplicity and protection of interest of women.

CONSTITUENT ASSEMBLY DEBATES ON UNIFORM CIVIL CODE

The journey of Uniform Civil Code in the Constituent Assembly begins at the committee stages of the Constitution-making process. The Sub-Committee on Fundamental Rights was asked to make a list of fundamental rights that were to be incorporated in the Constitution. An initial step that the sub-committee took was to request its members to emerge with their own personal drafts of fundamental rights. In the submissions of Ambedkar, Munshi and Minoo Masani, we find provisions that call for the adoption of a uniform civil code.

The members of the subcommittee divided the fundamental rights into two parts: justifiable rights and non-justifiable rights. As the terminology suggests, the former were enforceable in the courts while the latter were not.

After a couple of sittings, the sub-committee submitted its report to the parent committee- the Advisory Committee. Uniform civil code founds itself in the second part – the non-justiciable fundamental rights.

M.R Masani, Hansa Mehta and Amrit Kaur expressed their views on the uniform civil code as being non-justiciable by saying:

One of the factors that has kept India back from advancing into nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period 5 to 10 years.

4th of November, 1948, B.R. Ambedkar presented the Draft Constitution in the Constituent Assembly for deliberation. The uniform civil code found itself in Article 35 of Directive

Principles of State Policy. According to the text of Article 35 “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”

On 23rd of November 1948, the Constituent Assembly took this provision for discussion.

Mr Mohamad Ismail Sahib took the lead in the debate and proposed an amendment which runs:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."⁶

According to him the definition given under Art 35 included personal laws as well. He maintained that people have a right to follow their personal laws and state must not interfere with them. It is the only way in which harmony can be secured among people of different faith and believe. He stated:⁷

The right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people.

Mr Naziruddin Ahmad supported his points and proposed a similar amendment. He said, the proposed article is in contravention with Article 19 of the draft constitution which guarantees freedom of religion. He concluded his speech by saying “the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned.”⁸

B. Pocker Sahib Bahadur also opposed the said proposal and termed it tyrannical for the minority communities.

Afterwards, K.M. Munshi, Alladi Krishnswamy and Ambedkar took part in the debate and defended the uniform civil code.

⁶ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

⁷ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

⁸ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

K.M. Munshi first summarized the problem and then answered them piecemeal. Regarding its conflict with Article 19, he said, the parliament is empowered under the said article to bring about social reforms. He stated:⁹

“...the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.”

Then, he took a very strong view in negating the claims that it is tyrannical for minorities and fortifies majority. He stated:¹⁰

It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand?

Moreover, he emphasized the need of separating religious and secular matters to ensure unity. He stated:¹¹

..after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasized by this article.

⁹ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

¹⁰ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

¹¹ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

... religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation.

He also emphasized the problems that our community is going to face in the absence of a uniform law, especially in guaranteeing equality to women.

Shri Alladi Krishnaswami Ayyar responded to the argument of the opposition that Uniform civil code would bring disharmony. He said, such a law would in fact create amity among communities. He also emphasized how one legal system influences the other legal systems as well as is influenced by them. He stated:¹²

The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation.

B.R. Ambedkar appreciated the point of K.M. Munshi and Alladi Krishnaswamy Ayyar. He abnegated the argument that a uniform code cannot be applied in a country like India with such a vast diversity. Instead, he accentuated how such a law is already in operation in all the fields of civil law, except in case of marriage and divorce.¹³

He did not wish to add the proviso to the already unenforceable article 35, but was open to the slow inclusion of the communities with their voluntary consent.

¹² Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

¹³ Supra note 2

After Ambedkar`s speech, draft Article 35 was put to vote. All the amendments were negated and the original draft was passed. Later on it was re-numbered to Article 44. Thus, Article 44 of the Indian Constitution reads as follows

“The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”

JUDICIAL INTERPRETATION

The Indian courts have always been a staunch adherent of UCC. In the case of *Mohammad Ahmed Khan v. Shah Bano Begum*¹⁴, the Supreme Court for the first time asked the parliament to enact a common civil code for all the citizens of India. In this case, a destitute Muslim women, approached the court, claiming maintenance under Section 125 of the Code of Criminal Procedure after she was given triple talaq by her husband. The Court upheld her plea and ruled that a divorced Muslim woman has a right to claim maintenance from her husband under Section 125 even after the expiry of Iddat period. The then Chief Justice of India Y. V. Chandrachud observed:

It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue.

The court also criticized legislature`s inaction on this issue and reminded that it is their duty to implement the Uniform civil code.

It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative

¹⁴ AIR 1985 SC 945

competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform but, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

After this ruling, a nationwide agitation was held. The Government overturned this judgement by enacting the Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman to claim maintenance under Section 125 of the Code of criminal Procedure. The justification given by the Government was that the Supreme Court has merely made an observation for enacting the UCC which is not binding on the government or the Parliament and that there should be no intrusion with the personal laws unless the demand comes from the community itself.

It was just the next day after Shah Bano's judgement that a constitutional bench of Supreme Court emphasized the urgency of UCC in case of *Jordan Diengdeh vs S.S. Chopra*¹⁵.

The present case is yet another which focuses attention on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case...

It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste...We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of

¹⁵ 1985 AIR 935

marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have find themselves in.

The issue of Uniform Civil Code again came before Supreme Court in case of *Maharshi Avadhesh v. Union of India*¹⁶. In this case, a writ of mandamus was filed before the court to issue directions to the government to implement Uniform Civil Code. The court dismissed the petition on the ground that it was a matter of policy and concern of the legislature¹⁷.

Finally, the Supreme Court issued a directive to the Union of India in *Sarla Mudgal v. Union of India*¹⁸ to endeavor framing a Uniform Civil Code and report to it. Justice Kuldeep Singh observed

"The State shall endeavour to secure for the citizens a uniform civil code throughout 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

¹⁶ 1994 SCC, Supl. (1) 713

¹⁷ Ahmedabad Women Action Group vs Union Of India, AIR 1997, 3 SCC 573

¹⁸ 1995 AIR 1531

keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India.

The court thus requested the central government to take immediate steps in this regard.

“We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavor to secure for the citizens a uniform civil code throughout the territory of India".”

In *Pannalal Bansilal Pitti v. State of Andhra Pradesh*¹⁹, the court highlighted the importance of a common civil code but favored a gradual reform towards uniformity.

The directive principles of the Constitution themselves visualize diversity and attempted to foster uniformity among people of different faiths. A uniform law, though highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

But in *Lily Thomas v. Union of India*²⁰, the Supreme Court clarified the remarks made by it earlier in *Sarla Mudgal's* case. The court now asserts it has not issued any direction for the enactment of Uniform Civil Code. The Court said:

The directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justiciable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. Therefore to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

¹⁹ 1996 AIR 1023

²⁰ (2000) 6 SCC 224

In *Danial Latifi vs Union of India*²¹, it was contended before the constitutional bench of Supreme Court that the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 has deprived the divorced Muslim women of her right to claim maintenance from her husband as the Act provides that the maintenance is to be paid by the former husband only till the period of iddat. They contend that after the iddat period, she has to make runs from pillar to post in search of her relatives one after the other and ultimately knock at the doors of Wakf Board. This was submitted to be discriminatory compared to the women belonging to other religions. However the court didn't agreed with this contention and held that there was no discrimination as the state has provided a scheme of maintenance, which is equally beneficial compared to one provided under sec 125 CrPC.

In the case of *John Vallamattom v. Union of India*²², a three-judge bench of Supreme Court held section 118 of Indian Succession Act, 1925 as unconstitutional for being violative of Article 14 of the Constitution. The court once again expressed regret for the non-enforcement of common civil code.

It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.

The recent Supreme Court judgment in *Shayara Bano v. Union of India*²³, outlawing the practice of triple talaq, has been seen as the first step towards ending the personal law practices which are discriminatory to women. However, it was based largely on the premise that triple talaq is not an essential practice of Islam. The court suggested that bad in theology couldn't be good in law.

SECULARISM AND UNIFORM CIVIL CODE

India is a secular country. Though the term "secular" has been added to the preamble by the 42nd Amendment of the Constitution, the Supreme Court before this amendment, in the case of *Ahmedabad St. Xaviers College v. State of Gujarat & Anr*²⁴ has observed that

²¹ (2001) 7 SCC 740

²² AIR 2003 SC 2902

²³ (2017) 9 SCC 1

²⁴ AIR 1974 SC 1389

“Although the words secular state are not expressly mentioned in the Constitution, there can be no doubt that our Constitution-makers wanted establishment of such a state.”

The constitution does not define the term secular as it is a very elastic term and not capable of any precise definition. However its intent has been made clear by the Supreme Court in a number of judgements.

In *S. R. Bommai v. Union of India*²⁵, the Supreme Court clarified that a Secular state is not an irreligious or atheistic state. It only means in matter of religion it is neutral.

The State does not extend patronage to any particular religion, state is neither pro particular religion nor anti particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provide equal protection to all religions subject to regulation and actively acts on secular part.

While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally.

In the famous case of *Keshevanand Bharati v. State of Kerala*, the Supreme Court has recognized secularism as a basic feature of Indian Constitution.

Thus we can say that, it is the policy of state to protect all religions but to interfere with none. Its only concern is to ensure that religious freedom is guaranteed to all. At the same time, Article 25 to 28 guarantees certain rights relating to freedom of religion.

Now, at one hand we have Articles 25 to 28 which guarantees freedom of religion, and a secular system which ensures that the state does not interfere in the religious matters of the citizens. On the other hand, we want a Uniform Civil Code. Thus, one may ask, as to how the state is supposed to provide a Uniform Civil Code amidst such restrictions. A solution to this issue was given by the Supreme Court through its various judgements. For example, in the case of *S.R. Bommai v. Union of India*²⁶, the apex court observed that

²⁵ AIR 1994 SC 1918

²⁶ Supra note 25

“Religion is the matter of individual faith and cannot be mixed with secular activities, Secular activities can be regulated by the State by enacting a law”

Also, in case of *Sarla Mudgal v. Union of India*²⁷, Justice Kuldeep Singh observed

Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27.

The Legislation - not religion - being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India.

Similarly, Justice R.M. Sahai also observed that,

Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fiber. `But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression'. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity.

Therefore, it is quite pellucid from the views of the Supreme Court that a Common Civil Code falls within the category of social reform and so is free from restrictions enshrined under Article 25 to 28.

INTERNATIONAL CONVENTIONS

India is signatory to a number of international covenants and conventions for instance the Universal Declaration of Human Rights, 1948. Article 16 of this convention reads as under:

²⁷ Supra note 18

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

India is a party to this Convention and is bound to give effect to it.

Also, the Indian courts are under an obligation to give due regard to international conventions and norms while interpreting domestic laws and particularly when there is no inconsistency between them and there is a void in domestic law.

MERITS AND DEMERITS

Pros of UCC

To provide equal status to all the citizens

In the modern world of today, a secular democratic republic must have common civil and personal laws for its denizens irrespective of their class, caste, religion, gender etc.

To accommodate the aspirations of the younger population

A contemporary India is a thoroughly incipient society with 55% of its population is below 25 years of age. Their convivial postures and aspirations are shaped by universal and ecumenical principles of equipollence, humanity, and modernity and inclusive growth. Their view of shedding identity on the sole substructure of any religion or caste has to be given a serious consideration so as to utilize their full potential towards nation building can be realised completely

To fortify national integration and unity

All Indian citizens are already equal before the court of law as the criminal laws and other civil laws (except personal laws) are the same for all. With the implementation of the Uniform Civil Code, all citizens shall be subject to the same set of personal laws. There will be no scope of

politicization of issues and instances of discrimination or special privileges relished by a particular community based on their particular religious personal laws. The uniform civil code is hence the perfect embodiment of article 14 of the Indian constitution, which advocates and ensures equal protection of law.

To bypass the contentious issue of reform of subsisting personal laws

Subsisting personal laws are observed to be predicated on the upper-class patriarchal notions of the society in all religions. Demand for UCC is also made by aggrieved women as a substitute for existing personal laws but the conservatives still deem the reforms in personal laws will destroy their sanctity and as a result oppose it.

Women rights

A uniform civil code seeks to amend and refine the condition of women in India. Our society was substantially patriarchal and misogynistic and by allowing old religious rules to perpetuate even today through codified family laws, we are condemning Indian women to mistreatment. A uniform civil code will aid in transmuting these age old traditions and customs that have no place in today's society.

All modern nations have it

A uniform civil code is the beckoning of a modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been one of the highest in the world, the social and cultural gap has halted true development of our nation. This gap only increases the disparity and the feeling of division amongst the people. It might be right to mention that socially and culturally we have are at a point where we are neither modern nor traditional. The cultural lag is clearly one of the auxiliary reasons. A uniform civil code will help unify the social fabric and take India towards its goal of becoming an egalitarian nation.

Personal laws- a loophole

The sundry personal laws are fundamentally a loophole which are exploited by those who in a position of power. Panchayats still give judgments that contravene the constitutional mandate. Human rights are breached through honour killings, cruelty, muta marriage, female feticide etc. By sanctioning personal laws based on values irrelevant to our times, we have constituted a

judicial system that still operates on ancient values. A uniform civil code would respect the boundaries of all cultures while providing legal recognition and eliminating unjust practices associated with them.

Vote bank reduction

A uniform civil code will help in tackling vote bank politics that most political parties indulge in during elections. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. They will have to look for better promises and revamp their manifestos. Not having a uniform civil code is baleful to true democracy.

Cornerstone of secularism

The preamble of our constitution states that India is a sovereign, socialist, secular, democratic and a republic State. A uniform civil code 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. Such codes are in place in most modern nations.

Social reforms

Formulation of a uniform civil code will bring forth a much needed social reform in India. For instance, in the Indian context, Muslim women are gainsaid personal laws in cognation to marriage, divorce etc. Recently, triple talaq was held unconstitutional by the Supreme Court in Shayara Bano v Union of India¹.

CONS OF UNIFORM CIVIL CODE

Practical difficulties due to diversity in India

It is a tedious task to come up with a prevalent and uniform set of rules regarding personal issues like marriage and inheritance due to tremendous cultural diversity in India across religions, sects, castes, States etc. The implementation of the Uniform Civil Code is a cumbersome task due to a wide diversity of our nation. Cultural differences from State to State and community to community is yet another hindrance for a unified personal law. States have towns and cities and villages, consisting of communities and sub communities spread across the territory. With time,

these have adopted a plethora of customs and rituals vis-à-vis marriage, divorce, inheritance etc. This makes it a near impossible task to frame such laws which would be able to be applicable to and tender to all such classes of people while respecting their identities and practices.

Perception of UCC as encroachment on religious liberation

Many communities, concretely minority communities perceive Uniform Civil Code as a violation of their right to religious liberty. They fear that a common code will neglect their customs and traditions, imposing rules which will be mainly influenced by the majority religious communities.

Interference of State in personal matters

The constitution provides for the right to freedom of religion of one's choice. With codification of uniform rules and its compulsion, the scope of the freedom of religion will be reduced. Many communities feel that personal subjects including marriage and divorce are part of their religion which should be governed by their customs and Holy Scriptures. Any intervention in these matters by the State is deemed unnecessary.

A threat to communal harmony

Potential misunderstandings regarding the Uniform Civil Code caused trepidation among various religions, especially minorities. It is often alleged that UCC is aimed against their religious customs and values. Before the implementation of UCC, the government needs to win the trust of minorities. Otherwise, the communal harmony of the nation will be adversely affected.

Sensitive and tough task

A uniform civil code, in its true spirit, must be established by borrowing freely from different personal laws, making gradual variations in each to reach a fair middle ground. This can be achieved by dispensing judicial pronouncements, assuring gender parity, and adopting expansive interpretations on marriage, maintenance, adoption, and succession by acknowledging the benefits that one community secures from the others. This task will be will take a considerable amount of time, seeing that the parliaments of the past have barely an affirmative step. The regime should be sensitive and impartial at each step while dealing with the majority and minority communities. Otherwise, it might turn out to be counterproductive.

Opposition to the conception of a UCC stems from the interpretation of "secularism"- "multiculturalism" and the alleged tyranny of the Hindu religious majority. These contentions need to be unpacked and refuted one by one, while demonstrating what an ideal UCC should look akin to.

A threat to "secularism"

This argument perceives any endeavor to introduce a UCC as tantamount to State interference in religious affairs. However, should this interpretation of secularism prevail in the face of a conflict with our fundamental rights? In fact, severing religion from social institutions such as marriage, divorce, succession etc. to secure fundamental human rights for all forms is the essence of secularism.

WHO ALL ARE AGAINST UCC?

Considering the background behind UCC and the issues it promises to resolve, those who have been opposing the conception are vocal about their opposition to the potential unification of family laws across the nation, verbally expressing that it is unconstitutional and it takes away the cultural and religious rights of other minorities as well, which was promised to them by the constitution.

- **Naga Community**

The Naga minority community is upset by the implementation of UCC. The Nagaland Bar association has warned that the implementation of UCC would establish clear trouble for the culture and dignity of the Naga people.

They, in a letter addressed to the Prime Minister verbally expressed that,

“It will cause gregarious disorder, and if a Uniform Civil Code is introduced covering the entire country, it shall cause so much hardship and gregarious disorder to the Nagas as the personal and gregarious life of the Nagas are quite distinct from the rest of people in the country.”

- **Political Parties**

Some other political parties are additionally against the move of the implementation of UCC. According to them, it is a clear infringement of the minority rights. Their main issue lies in the fact that its implementation in a multi-cultural country would be virtually infeasible.

It is also argued that their particular stance is for the maintenance of their vote banks and appeasement of the minority.

- **Muslim Community**

Regarding the questionnaire taken out by the law commission in 2016, there has been clear and evident rejection by the Muslim community as the All India Muslim Personal Law Board absolutely disregarded the Law Commission's questionnaire on the UCC and decided to boycott it.

All India Muslim Personal Law Board's General Secretary Mr. Maulana Wali Rehmani verbalized that,

“Uniform Civil Code is divisive and will lead to convivial unrest, and that it is against the spirit of the Constitution, which safeguards the right of denizens to practice their culture and religion,”

The minorities view reflects the viewpoint that if the need comes, the Union Government can take out a public referendum on the issue of such a code and not just hold what the majority views are on the issue. The view is that it's a component of Muslim personal law and thus only Muslims shall be sanctioned to decide on the issue and not persons of every religion and community.

CONCLUSION

The question before us, is whether a Uniform Civil Code would divest away a voluminous part of what these minorities perceive as their culture and identity? Given the recent trends in India, there is an alleged risk that a UCC would, in fact, serve as a tool for the government to entrench the ethnic State, thereby instituting the 'tyranny of the majority' which the Indian constitution prohibits. If such a tyranny is to be avoided, there must be checks and balances between State institutions. For these to work, however, State institutions need to be able to work with a fair degree of independence from political forces thereby ensuring transparency. Article 25 does protect right to profess and practise religion, but is also subject to public order,

morality and health. The scholars urge that it is high time to provide constitutional protection to the minorities. The best way they see it happening is to bring every citizen under the same set of laws regarding marriage, divorce, inheritance etc. The procedure of the parliament will make sure that everyone is guaranteed all of their human rights while respecting their personal identity, viz-a-viz, their customs and practises.

The question asked in this debate is rather counter-productive:

“What shall be given priority- personal laws which contain archaic and discriminatory elements or the complete overhaul of personal laws which might further threaten the foundation of what this nation was built on?”

The answer seems to lie in the middle.

As it always has, the government needs to start eliminating the undesirable parts i.e. the unjust and discriminatory components from various personal laws.

The gradual but steady pace of such amendments will maintain internal and external peace among the communities which supposedly so vehemently oppose such a common code.

It will give them time to cope with new changes in their laws which govern their day to day lives and which form a part of their identity.

Then, when the time eventually comes, the incumbent can actually start debating and even pass a rudimentary but well-made code, which could be at the option of the citizens. Subsequently, more and more people will give consent because they will see the greater good. They will see the complicated situations which arise and divide citizens of India. When the personal laws become almost homogeneous with discrete and distinct features respecting various communities, such a Code will finally come into existence. Everybody will know that such a thing did not come to be overnight; it took a whole nation to bring such an apotheosis of an Egalitarian principle to life.

Recently, a PIL was filed in the Delhi High Court on 30th May, 2019 seeking the directions of the court to the Central Government to implement a UCC. Whether this petition would yield something fruitful or will it be disposed of like many others, only time will tell.

