
Uniform Civil Code – Still India’s Need of an Hour?

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There is nothing non-secular or sectarian in demanding that provisions of Indian civil laws should apply to all
– Amarty Sen (1993)

Abstract

The Uniform Civil Code (UCC) calls for the formulation of one law for India which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under the Article 44 of the constitution which lays down that, state shall endeavour a uniform civil code for all the citizens throughout the territory of India. The issue has been at the center of political narrative and debate for over a century and priority agenda for BJP which has been pushing for legislation in parliament. The Saffron Party was the first to implement UCC if it comes to power and issue was part of its 2019 Lok Sabha Election Manifesto.

Keywords: Uniform Civil Code, Secularism,

What is Uniform Civil Code?

Uniform Civil Code is observed as a same set of secular civil laws so as to govern all the people irrespective of caste, religion and tribe. It was the proposal to replace the personal laws with a common set of governing citizens. The code was recognized as “**One nation one Code**”. It deals with the laws such as marriage, divorce, succession, inheritance, adoption and other family matters.¹

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Apart from being an important issue regarding secularism in India, it became one of the most controversial topics in contemporary politics.

Historical Perspective

➤ Pre-Independence (Colonial Era)

In the Lexi Loci Report it stressed out the importance and necessity of uniformity on the codification of Indian law, relating to crimes, evidence and contract. But it also

¹ Pratistha Jain, *uniform Civil Code: A Practical Panorama or Illusion of Law Makers*, LEGAL SERVICES INIDA (Aug 26, 2021), <https://www.legalserviceindia.com/legal/article-1234-uniform-civilcode-a-practical-panorama-or-illusion-of-law-makers.html>.

suggested that the personal laws of Hindu and Muslims should not be kept inside of such codification².

So, while the criminal laws were codified and became common law for the whole country, personal laws continued to be governed by separate codes for different communities.

➤ **Post-Colonial Era (1947-1985)**

During the drafting of constitution, prominent leaders like Jawaharlal Nehru and Dr. B.R. Ambedkar pushed for uniform civil code. However, they included UCC in the Directive Principles of State Policy (DPSP) Article 44 mainly due to opposition of religious fundamentalists during that time³.

Some reforms of this period are as follows:

- The Hindu Code Bill
- Hindu Succession Act, 1956
- Minority and Guardianship Act
- Adoption and Maintenance Act
- Special Marriage Act, 1954

Personal Laws and Uniform Civil Code

- During the time of British period personal laws were first mainly for Hindus and Muslims.
- 20th Century
During the start of the century, the demand for UCC was first put up in front by women activist.
- 1940- Idea of UCC was inborne
The idea of UCC was proposed by the National Planning Commission (NPA) appointed by congress.
- 1947- UCC as a Fundamental Right
In the Constitution of India UCC was preserved as a fundamental Right by Minoo Hasan, Hansa Mehta, Amrit Kaur and B.R. Ambedkar.
- 1948- Topic debated
Article 44 of the Indian Constitution i.e., DPSP sets execution of UCC which is the duty of the state under Part 4.
- 1950-Reformist Bill
This bill gave the Hindu Women the right to divorce and inherit property. Practices like bigamy and child marriages were outlawed.
- 1951- Dr. Ambedkar resigns
He resigned from the cabinet when his draft of Hindu Code Bill was stalled by Parliament.

² G.S. Suvethan & R. Niranjana et. al, *Discerning the Need for an Uniform Civil Code*, 16 IJER 185, 2019.

³ *Uniform Civil Code- Challenges, Suggestions & Debate on UCC*, BYJUS.COM (Aug 27, 2021), <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>.

In the year 2015 the apex court refused to direct the government to take decisions pertaining on UCC. In the upcoming years Honorable PM Narendra Modi asked law commission to analyze the issue and on August 22, 2017 Triple Talaq was held unconstitutional.⁴

Merits of Uniform Civil Code

If the concept of one nation one code is enacted and enforced-

- It would integrate India.
- Loopholes pertaining to personal laws would disappear.
- It would be a sign of modern progressive state.
- It would give more rights to women.
- It will promote real secularism.

Is there any state which follows UCC?

Goa has already managed to enforce UCC within its jurisdiction. It is a sole state which has a common civil law called Portuguese Civil Code, 1867 whereby-

- A Muslim man whose marriage is registered in the state cannot practice polygamy.
- A married couple share equally, pre-nuptial agreements are the order of the day and assets are divided equally between them.⁵

Since the first petition was submitted in the year 2019 to demand the creation of UCC, to promote national integration and gender equality, justice and dignity of women it has become hotly disputed topic in India.

Role of Judiciary

The judiciary has faced a lot of problems while upholding the social reforms. There is glut of cases that takes into consideration the concept of UCC. Some of them are:

Mohammad Ahmed Khan v. Shah Bano Begum⁶ in which a divorced woman was brought under the extent of Section 125 of Code of Criminal Procedure, 1973 by the Supreme court in which it was declared by the Apex court that she was entitled for maintenance even after the iddat period.

Sarla Mudgal v. Union of India⁷ in this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnize 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

⁴ Raghav Ohri, *Law Commission all set to go through family laws of all religions*, THE ECONOMIC TIMES (Aug 28, 2021), <https://economictimes.indiatimes.com/news/politics-and-nation/law-commission-all-set-to-go-through-family-laws-of-all-religions/articleshow/61840697.cms?from=mdr>.

⁵ Krishnadas Rajagopal, *Government has failed to bring in Uniform Civil Code, says Supreme Court*, THE HINDU (Aug 27, 2021), <https://www.thehindu.com/news/national/government-has-failed-to-bring-in-uniform-civil-code-says-supreme-court/article29412592.ece>.

⁶ AIR 1985 SC 945.

⁷ AIR 1995 SC 1531.

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).

John Vallamattam v. Union of India⁸ in this case, a priest from Kerala, John Vallamattam challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr. Vallamattam contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional.

Conclusion

For an ideal state, UCC would be ideal defend of citizens privileges. Its authorization would be progressive legislation. With the passing of time the need has risen for having a common civil code for all religions irrespective of religions guaranteeing that their fundamental constitutional rights are ensured. According to my point of view for an ideal state UCC would be an ideal safeguard of citizen's rights. Its adoption will be a progressive legislation. With changing times, the need has arisen for having a Common Civil Code for all citizens, irrespective of religion, ensuring that their fundamental and Constitutional rights are protected. Even Secularism and National Integrity can also be strengthened by introducing UCC.

At the end we should recall the words of Mahatma Gandhi: "*I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another*".

⁸ AIR 2003 SC 2952.