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UNIFORM CIVIL CODE AND THE MARCH OF TIME

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‘I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights.’

— Dr. B.R. Ambedkar

ABSTRACT

The Constitution of India has enumerated certain Directive Principles of State Policy with a view to achieve amelioration of the socio-economic condition of the masses. In this era, these policies strengthen and promote this concept by seeking to lay down some welfare goals to promote the welfare of the people and achieve economic democracy. One such directive principle is the Constitutionally-enshrined Uniform Civil Code. After 71 years of independence and claiming that India is a secular country, can help combat the misuse of personal laws for ego-centric purposes. From time to time Courts as well as politicians have laid the importance of the Uniform Civil Code but none of them has able to influence the lawmakers of the Legislative Assembly who is empowered to make laws regarding the same.

INTRODUCTION

Uniform civil code in India is the proposal to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. The object behind the Article 44 is to affect an integration of India by bringing all communities on the common platform and matters which are at present governed by diverse personal laws. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India,” says Article 44 in Chapter IV in the Directive Principles of State Policy.

Scope and Object of Article 44- The object of this article is to propose a uniform personal law for the purpose of nation’s consolidation. Originally when the initiation of a uniform civil code was proposed during the parliamentary debates, the political climate was sharp

regarding religious issues as the country was facing aftershocks of the partition. Thus, Article 44 was inserted in D.P.S.P. Though the constitution-makers had a staunch belief on the insertion of a Uniform Civil Code in the country, they felt that its enforcement as a definite law must take place after the secularist aspect is firmly settled in the nation. While the Constitution guarantees freedom of conscience and religion (Article 25), it seeks to divest religion from personal law and social relations and from laws governing inheritance, succession and marriage, just as it has been done even in Muslim countries like Turkey or Egypt.

The landmark judgment dated 24.04.1973 in Kesavananda Bharati Vs State of Kerala\textsuperscript{121} and other judgments including Shah Bano Case\textsuperscript{122}, John Vallamattom Case\textsuperscript{123}, Raghunath Rao case, etc., are very essential for proper implementation of a secular nation and brotherhood among all the people of India which is the need of the day to strengthen the unity and integrity of the nation.

**HISTORY – COLONIAL ERA**

The debate for a uniform civil code dates back to the colonial period in India. The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification. This is one was that the British let us govern ourselves yet created a divide amongst us. Throughout the country, there was a variation in preference for scriptural or customary laws because in many Hindu and Muslim communities, these were sometimes at conflict; The Hindu laws got preference because of their relative ease in implementation, preference for such a Brahmanical system by both British and Indian judges. Towards the end of the nineteenth century, favouring local opinion, the recognition of individual customs and traditions increased.

The B. N. Rau committee, which was set up to determine the necessity of common Hindu laws. The committee concluded that it was time for a uniform civil code, which would give equal rights to women keeping with the modern trends of society but their focus was primarily on reforming the Hindu law in accordance with the scriptures.

**UNIFORM CIVIL CODE AND CONSTITUENT ASSEMBLY DEBATES**

As referred before, UCC was originally encapsulated in article 35 of the Draft Constitution. There was a demand to add a proviso in article 35 which would make the UCC, whenever it would have been enacted, not obligatory in nature and personal laws be kept out of its purview. The proviso read as, “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.”

B. R. Ambedkar, a staunch supporter of the UCC, denied the claims that a common civil code in a vast country, like India, would be impossibility. He stated that the only sphere which did not have a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, The Easement act, Sale of goods etc. were uniform in nature. Let us not forget that Ambedkar was a man who believed in reform along the western line. He differed from Mahatma Gandhi in this respect and considered the western model of law and social relations to be an apt reference point to bring social reforms in Indian setup. 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 once the legislature fulfils its promise to have a UCC. He stated:

“I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour 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.”

This positive side of the debate on UCC time and again reminds the people to tend to the lacunae 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.

**POST-COLONIAL INDIA AND CIVIL CODE**

Uniform Civil Code was an abundantly talked about issue in the Parliament of India in 1948, after India got Independence. Jawaharlal Nehru in 1930, though he supported a uniform civil code, he had to face opposition by senior leaders like Vallabhbhai Patel and Rajendra Prasad.

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According to Ambedkar, only law reforms could save this country from discriminatory laws that are advocated by all religions in some ways or other and the Code bill was this opportunity. Nehru was persuaded about it and acquired the Hindu Code Bill in 1955. But on September 25, the portion of the Hindu Code Bill concerning marriage and divorce was deformed by amendments and finally buried without much protest. It is utterly significant that Ambedkar chose to leave the government of Nehru on the issue of the Hindu Code Bill. the Congress Party (which was in power during that period) had given a confirmation that it would permit Muslims to practise 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.

CURRENT STATUS

The most used tagline to describe India is “Unity in Diversity”, this shows that as a country of Millions, India is populated by a variety of cultures, religion, traditions and practices. Though as Indians we all take pride on this fact, yet there are times when we tend to ignore the drawbacks of the same. The idiosyncratic personal laws of Hindus, Muslims, Christians and Parsis regarding Adoption, Marriage, Guardianship, Succession, Divorce etc. turns into a perplexed state of affairs. India is a secular nation, that is all religions are equal in the eyes of law, but all religions have their own laws for governing their personnel sphere. These laws include, Hindu Marriage Act, 1955 (appropriate to not simply Hindus, Buddhists and Jains but rather additionally to any individual who is not a Muslim, Christian, Parsi or Jew, and who is not administered by some other law), Muslim Personal Law (Shariat) Application Act, 1937 (making Sharia laws appropriate to Indian Muslims), The Indian Christian Marriage Act of 1872 (appropriate to entire of India aside from zones of former Travancore-Cochin, Manipur and Jammu and Kashmir), The Parsi Marriage and Divorce Act, 1937, and the list goes on. Several changes have been made to the religious practices for a better and an integrated nation, which include abolition of sati or act for widow remarriage. Then why not one makes a Uniform law for all? This can reduce gender discrimination amongst religions and would give birth to a more integrated India.

The Constitution calls upon the State by means of Article 44, which manages the Uniform Civil Code expresses: “The State shall endeavour to secure for the citizens, a uniform civil code throughout the territory of India”. The implementation cannot be enforced by judiciary
as it can't be upheld by any court and in this way, these are non-lawful rights. Yet Judiciary has gone leaps and bounds to set right this position and has made several remarkable judgments and asked Legislature to pursue its Goal and achieve a uniform civil code. Let us now go back in time to walk through this judicial journey.

THE HEADWAY BY JUDICIARY
Judiciary has been keen in reforming and interpreting laws in such a manner that can improve the lives of millions in any ways possible. U.C.C. can emerge only as a consequence of an evolutionary process which is sensitive to Indian Culture and diverse factors and judiciary through its various pronouncements has taken these steps to set the ground right for U.C.C., some of these are:

- **Mohammad Ahmed Khan v. Shah Bano Begum**\(^{126}\) is a sensational case wherein the Supreme Court held that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” The impact of religious pressure on Indian politics is visible after what happened the verdict of this case. The Muslim Fundamentalists criticized this judgment and succumbing to this pressure the then Central Government passed the Muslim Women’s (Protection of rights on Divorce) Act 1986, which denied right of maintenance to Muslim women under section 125 Cr.P.C. This is the amount of extra importance that is given to personal laws that an Act was passed in contradiction to Cr.P.C. and women belonging to one a particular religion was to be treated differently at their own cost. “That also showed how women’s rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women’s rights.”

- **In Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others**\(^{127}\) the Apex Court while directing the government to implement the directive of article 44 held that, “Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44, Therefore the Supreme Court requested 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 endeavour to secure for its citizens a uniform civil code throughout the territory of India.”

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\(^{127}\) A.I.R. 1995 SC 1531.
However, in *Ahmedabad Women’s Action Group (AWAG) v. Union of India*\(^{128}\), a PIL was filed challenging gender discriminatory provisions in Hindu, Muslim and Christian statutory and non-statutory law and the Supreme Court this time gave a verdict that was not only shocking but was widely criticized all over the Country. The court stated that “the matter of removal of gender discrimination in personal laws involves issues of State policies with which the court will not ordinarily have any concern.” And took a backstep as a convoy of the principles of equality regarding gender related issues of personal laws of various communities in India.

The Apex Court pursued the same line in *Lily Thomas etc. v. Union of India and others*\(^{129}\) and blamed the situation stating that “only when social climate is properly built up by the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change for the betterment of the nation at large” UCC can be thought of.

The situation regarding the personal laws for Christians in India was different. In their case, the courts seemed to be bolder and took a progressive stand in terms of gender equality. For instance, when the case of *Swapna Ghosh v. Sadananda Ghosh*\(^{130}\) the Calcutta High Court expressed the view that sections 10 and 17 of the Indian Divorce Act, 1869, should be declared unconstitutional but nothing happened till 1995. Again, in yet another case, the Kerala High Court in *Ammini E.J. v. Union of India*\(^{131}\) and Bombay High Court in *Pragati Verghese v. Cyrill George Verghese*\(^{132}\) have categorically struck down the section 10 of Indian Divorce Act, 1869 as being violative of gender equality.

**THE PROTRACTED BATTLE IN GENDER DISCRIMINATION**

*Justice K S Puttaswamy (retd.), and anr. v. Union of India and ors.*\(^{133}\) it was held that right of privacy, an inherent right, be unequivocally a fundamental right embedded in part-III of the Constitution of India, in *NALSA v. Union of India*\(^{134}\), the Court noted that the right against sex discrimination stands "to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary

\(^{128}\) *Ahmedabad Women’s Action Group (AWAG) v. Union of India.*; AIR 1997 SC 3614.

\(^{129}\) *Lily Thomas etc. v. Union of India and others.*; AIR 2000 SC 1650.


\(^{133}\) *Justice K S Puttaswamy (retd.), and anr. v. Union of India and ors.*; 2017 (14) SCALE 375.

\(^{134}\) *NALSA v. Union of India.*
genders.” Further in *Shayara Bano v. Union of India and others*, The court declared Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq thereby, recognizing the inherent dignity of the entire human family as equal and inalienable and most recently, to everyone’s surprise, the Court in *Navtej Singh Johar & ors. v. Union of India* held the age-old section 377 void, stating insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution. Thus, giving it clear that no one shall be discriminated on the basis of sex or gender for any reason may it be religious or biological.

**WHAT NEXT?**

The evolution has taken its zeal, now it's time to bring in change that's asked for by the situation. The partial striking down of Section 377 now has raised several questions regarding the laws that will ensure the protection of LGBTQ community, including laws for marriage, adoption, inheritance etc. What sort of laws should the legislature make for this newly recognised community? Do these personal laws actually have any “non-discriminatory” laws for LGBTQ per se? Do they actually have enough representation in the parliament which can ensure unbiased laws for them?

Not only this, the Triple talaq judgment has lead way for further more questions. For instance, how far the religious or the personal laws are sensitive toward women and their needs? How will it ensure general equality and treat men and women with equal dignity? Is it not time for change to ensure a more ‘integrated yet diverse India”? Is it not time for ‘acceptance’ rather than ‘tolerance’?

“We should get out of the miasma of all religious and gender majorities and minorities.”

*Mahatma Gandhi*

**RESOLVING THE MILLION DOLLAR QUESTION**

The answer to all the question raised lies in UCC. The required social climate as referred in Lily Thomas case has been built now. The Judicial actions in the past two years has led to an environment which necessarily indicates towards emerging need for UCC.

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135 Shayara Bano v. Union of India and others.
The increasing participation of women in all walks of life makes it necessary that they get the equal rights and opportunities as not only in public places but in family as well for which Uniform Civil Laws are essential, as it is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par.

Not only that, with increased globalization there has been a lot more intermixing and dilution in orthodox religious ways and helps in greater acceptance and these separate personal laws stand as barricade in this beautiful process. In the modern era, a secular democratic republic should have a common civil and personal laws for its citizens irrespective of their religion, class, caste, gender etc.

A Young India as it is addressed today is fast shedding its deep-rooted identities in religion and an aspiring nation shaped by principles of equality and humanity is emerging, in such conditions Religious identities play a major role in dividing this Indians rather than uniting them, which is reducing the complete potential towards building a strong nation.

To accommodate the aspirations of the young population; with increasing globalization, the religious identities are manipulated by power hungry politicians and all other laws being common this sphere of life becomes easy target by using the ideas of “privileged positions” of one group to manipulate the other. With the implementation of Uniform Civil Code, all citizen will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

It is claimed that the UCC is unnecessary and reforms in existing laws are recommended but will these minor reforms make any impactful change? For those who are actually aggrieved these reforms will make no true change, Only UCC can ensure some actual change.

Severing religion from social institutions such as marriage, divorce, succession etc. to secure fundamental human rights for all forms the essence of secularism.

IS INDIA READY?
The most general argument and criticism raised against U.C.C. is that India has a humongous cultural, ethnic and socio-religious diversity that to manage to come up with a uniform set of laws for governing the personal sphere of people’s life in India is quite close to impossible especially when there exists multiple sub culture within one and then emerges this major
question put up by the actual minorities that, would they ever get the required representation, that would not neglect their needs when UCC is actualized.

- **Will U.C.C. be secular in its holistic form?**

  The task of creating of such a law would demand a lot of human resource with attached sentiments and require them to be unbiased and sensitive towards all, the majorities and the minorities and will also consume a lot of time.

Though the enforcement of UCC demands for quite a huge number of professionals and skilled people in the required fields of law, the final outcome of the well-established act will definitely bear fruitful gains.

**But does UCC actually threaten secularism?**

Is it not, that severing religion from social institutions such as marriage, divorce, succession etc., to secure fundamental rights of all, forms the elixir of it? Further, UCC is said to be an attack on multiculturalism, but most religious practices in India are plagued by absolutism, and shielded from the effects of markets, democracy, development of human rights etc. and thus essentially demands change.

UCC will strive towards harmonising political interests between public and private sphere. The objective of this could would be to identify the set of norms in tune with building a neoteric, egalitarian society putting an end to classification in the name of religion, and not to identifying any community whose norms are best suited to meet this objective. The realisation that our interpretations are constricted by the letter of the law and by practices that have persisted for centuries, often without accounting for the practices of minorities or a consideration of viable alternatives is vital to make the case for providing representation to all communities in drafting a UCC.

*The note of caution in the apex court’s Sarla Mudgal judgment — “the desirability of uniform civil code can be hardly doubted but it can concretise only when social climate is properly built by the elite of the society and the statesmen, instead of gaining personal mileage, rise above and awaken the masses to accept the change” — merits serious thinking by all stakeholders.*

**CONCLUSION**

It is interesting to note that in Goa there is Goa Civil Code, which is a uniform civil code in itself. It is followed since Portuguese time. Although there were chances to revoke the old
law after the departure of Portugal but locals raised the voice against that decision. This is an indication that people are willing to accept uniform code regardless of religion and the Country as a whole is now ready for this change. The time has come that now we adopt the rich legal heritage inclusive of all the personal laws at equal constituents. The most needed equality amongst all genders and religions will be achieved aftermath the powerful enforcement of UCC. Sensitization amongst the public has set the ground right and the current institutions need to be modernized, democratized and strengthened which UCC can achieve with ease. Thus, in order to cherish and uplift the vast cultural and religious diversity and also to take our Country towards it becomes the most important step to bring Uniform Civil Code into practice.
Thanking Note

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AMIT SINGHAL

Editor-in-Chief

On behalf of the esteemed members of the Editorial Board, Honourable Members of the Advisory Council & the members of the Publishing Unit