

UNIFORM CIVIL CODE: UTOPIAN OR QUINTESSENTIAL?

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Introduction:

Addressing the need of the hour

The Uniform Civil Code or UCC is a proposal made to substitute all personal laws that are followed by citizens from different religions, faiths and ethnicities and replace them with a single code of law which will govern every citizen irrespective of the scriptures and customs that their religions require them to follow. The ambit of these personal laws includes marriage, divorce, inheritance, adoption and maintenance. **Article 44** of the constitution however states: Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India¹. It endeavours to follow a Uniform Civil Code as a Directive Principle of State Policy (DPSP). Our constitution framers always had a vision to establish a UCC in the country: treat the equal equally and the unequal unequally despite their religion's personal laws. A DPSP however according to **Article 37**² of the constitution is not enforceable even though it is a fundamental part of our governance. The question that our Executive and Judiciary are faced with today is: Is India ready for a Uniform Civil Code? Are we ready to leave behind our traditions, customs and personal laws that we've derived from our scriptures and move forward towards a common code?

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¹ <https://indiankanoon.org/doc/1406604/>

² Application of the principles contained in this Part The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws

The words of Article 44 of the constitution have previously been used in the favour of both the Opponents and Supporters of the Uniform Civil Code. The true implications of the article however have been vastly misinterpreted. It does not direct the Parliament to simply draft a uniform code and implement it. The words of the article seem to imply that all organs of the state must strive to and make efforts to reach uniformity amongst all personal laws that we have in India. Until 2008 our society was without doubt not ready for a Uniform Civil Code: The 18th Law Commission of that year, headed by Justice Jagannadha Rao was rumoured to have been directed by the then UPA government to draft a report about a potential Uniform Civil Code and its acceptance by the citizens. These rumours were however squashed by **Tahir Mahmood** in an article written by him published in The Hindu³. He clarified that a law commission exists to only conduct studies on controversial legal issues. He also claimed that the law commission also went so far as to reject his report on a revision of the chaotic **Muslim Personal Law Application Act, 1937** because of an uproar by Muslim religious leaders who immediately assumed that the report would definitely pave way for a Uniform Civil Code. The fact that the adoption of a report that simply recommended changes in Muslim law set imaginations running and caused disruptions and outcries from religious leaders clearly proves that we still hadn't reached a balance in society to welcome a uniform code with open arms. Eight years hence, are we prepared?

What would a Uniform Civil Code entail?

Citizens today are governed by a variety of personal laws based on their caste, creed and religion. In order to prevent this diversity, there is a need to encompass

³<http://www.thehindu.com/opinion/op-ed/tahir-mahmood-writes-on-uniform-civil-code-consider-it-seriously/article8835864.ece>

all these personal laws and find a common ground through a uniform code of law for the governance of all the people. The main objective of the UCC is to reach a point of national integration by nullifying our diversities: it ensures national integration by rendering all the contradictions in law present due to differing religious ideologies as obsolete. With a UCC all communities and faiths in India would be standing on a common platform when it comes to matters of marriage, divorce, adoption, maintenance, inheritance etc.

At present we have a common code that applies uniformly to all citizens with regard to contracts and torts, if that standardisation has proven to be a triumph since it hasn't resulted in carnage, a UCC may work out as a boon for us too. All the matters that fall under the ambit of personal law today are matters of secular nature. Matters like marriage, inheritance and divorce have no absolute connection with religion and neither is there any kind of interdependence between both. Judges of the Supreme Court have time and again urged the government to implement a UCC by lamenting after Article 44. The execution of a UCC is vital. It's necessary for national integration as well as for protection of the rights of the oppressed. The execution of a UCC would aid the nation in moving toward a more secular state by placing all religions, faiths and creeds on the same platform. It will provide more importance to a person's individual identity and encourage in placing that identity before their personal religious ideologies or afflictions.

Judicial Pressure:

In numerous cases that were brought for adjudication to the Supreme Court, the judges stressed the importance of enforcing a UCC whilst conveying their verdict and thus following the underlying principle that has been encoded in Article 44 of the constitution. A few examples are:

Shah Bano Begum Case⁴

In this case, a Muslim woman approached the court to seek an order declaring that her claim for maintenance from her husband who had divorced her through *triple talaaq* under **Section 125⁵** of the **Code of Criminal Procedure, 1973** as valid. Typically, maintenance is not granted to a Muslim woman beyond the *iddat* period after her divorce (three months). The Supreme Court delivered a judgement that went against Muslim Law and ruled that the petitioner had a right to claim maintenance. Justice Y.V Chandrachud who presided over this ground-breaking case remarked:

"A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies".⁶

The immediate reaction that this judgement caused had the nation erupting in an uproar which had to then be appeased by the Rajiv Gandhi government which said that the above judgement which vehemently stressed on a uniform civil code was merely an observation and wasn't binding on the government. The government circuitously overruled this landmark judgment by passing the **Muslim Women (Right to Protection on Divorce) Act, 1986** which truncated the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure.

Sarla Mudgal vs Union of India and Ors⁷

In the above mentioned case, the question put forth to the court was if the act of marrying another woman while the first wife is still alive and therefore

⁴ 1985 SCR (3) 844 (Mohd. Ahmed Khan v. *Shah Bano Begum*)

⁵ <https://indiankanoon.org/doc/1056396/>

⁶ <http://www.legalserviceindia.com/articles/sabano.htm>

⁷ 1995 AIR 1531, 1995 SCC (3) 635

committing the offence (under **Hindu Marriage Act, 1955**) of polygamy valid if the man has converted to Islam (a religion which licences polygamy) from Hinduism before marrying the other woman. The court ruled with a resounding no and declared the second marriage to be void in nature. Justice Kuldip Singh who presided over this case was quoted saying “Article 44 has to be retrieved from the cold storage where it is lying since 1949”. He also emphasised the significance of the UCC by saying that:

"Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘uniform civil code’ for all the citizens in the territory of India."⁸

In our country today we have various personal laws (Hindu, Muslim, Christian, Parsi) apart from the **Special Marriage Act, 1954** the country’s diversity and the heterogeneity seen with respect to religion makes the subsuming of all these laws into a single code of law a monstrous task. The personal laws today differ from religion to religion and faith to faith. There are a few acts or omissions that are legal in one kind of personal law whilst being illegal under another religion’s personal law, this does not make the secular nature of our country obsolete but also leaves the stage open for exploitation. For example, polygamy is valid under Muslim Law but is frowned upon under Hindu Law. The protection of the aforementioned exploitation whilst safe guarding citizens’ religious sentiments and affiliations is similar to throwing down a gauntlet for the State.

⁸ <https://indiankanoon.org/doc/733037/>

In a recent judgement that was delivered on the & of 7 July, 2015 the Supreme Court again took the initiative to highlight the immediate necessity of a uniform civil code, keeping in mind the changing times and the transitions that are taking place in the society. In the case of **ABC vs The State (NCT of Delhi)**⁹ where the petitioner chose to not disclose personal details by invoking her right to privacy the Supreme Court was approached through a Special Leave Petition and was confronted with yet another clash between personal law (Christian Law in this instance) and the laws of the State. The petitioner was a Christian woman who approached this honourable court of law seeking legal guardianship rights over her child who was illegitimate. Christian Law tenets clearly state that a child born out of marriage would not directly be under the guardianship of the natural mother especially without the father's prior "permission".¹⁰ Unlike Christian tenets, according to Hindu Laws guardianship rights naturally flow to the mother by virtue of their maternity alone, even if the child is illegitimate as the welfare of the child is given utmost importance and becomes the topmost priority. Considering the changing society which today sees a rapid rise in single parent families, the Court went against Christian tenets and stated that an unwed mother, no matter which religion she belonged to, would have legal guardianship of her child without any prerequisite of involving the natural father.¹¹

This decision gave birth to another landmark judgement that resulted in a religion's personal law being overruled by the Court. The bench also decided not to be swayed by the tenets of Christian law, and said: "India is a secular nation and it is a cardinal necessity that religion be distanced from law. Therefore, the task before us is to interpret the law of the land, not in light of

⁹ Arising out of SLP (Civil) No. 28367 of 2011

¹⁰ file:///C:/Users/Shreya/Downloads/fulltext_stamped%20(1).pdf

¹¹ <http://blog.iplayers.in/rights-illegitimate-children-christian-law/>

the tenets of the parties' religion but in keeping with legislative intent and prevailing case." It also held: "It would be apposite for us to underscore that our Directive Principles envision the existence of a uniform civil code, but this remains an unaddressed constitutional expectation."¹²

Following in the footsteps of Goa:

There is a part of India where a UCC has been functioning smoothly and beautifully for several years. Goa governs itself according to the **Portuguese Civil Code, 1867** with regards to all personal matters like marriage, divorce and inheritance. There is no discrimination between religions and there is an unambiguous equality before the law. A person's religion plays no role in ascertaining which kind of law must be applied to him/her. There seems to be a perfect balance maintained in these laws. For example a marriage is treated like a contract (Muslim personal laws declare the same), women and men have an equal right to file for a divorce and this progressive law calls for strict monogamy (as seen in Hindu personal laws).

In a law conference held in Goa in the year 1979 by the Goa, Daman and Diu Bar Association, an attendee of the conference, the then Chief Justice of India, Justice Y. V Chandrachud who had always been a staunch believer in the Uniform Civil Code commented saying, "It is heartening to find that the dream of a uniform civil code in the country finds its realisation in the Union Territory of Goa".

He also voiced his hope that the Goan Civil Code would one day "awaken the rest of bigoted India and inspire it to emulate Goa".¹³

¹² http://supremecourtindia.nic.in/FileServer/2015-07-06_1436184974.pdf

¹³ <http://mmascgoa.tripod.com/id12.html>

Is the time right?

We seem to be oscillating like a pendulum with the implementation of a Uniform Civil Code and the abolishment of the mere idea of a UCC as both our extremities, today. Having a party who strongly backs a UCC in power at the Centre (which included execution of a UCC in its manifesto and called it a burning priority however hasn't taken any constructive steps towards achieving the same even after two years of being power) should have given a substantial push towards accomplishing the goal but at the same time having a majority of the parties in the Opposition standing firmly against a UCC who are backed by the minority religions in the country who have let their insecurities about their religious ideologies being stamped out in the name of a more secular nation, overshadow the vitality of a UCC to satisfy the needs of the hour, the government seems to be stuck between a rock and a hard place. Pressure from the Judiciary every turn of the way acts as a painful reminder but has proven to do nothing towards achieving that delicate balance between working towards a secular nation and taking all forms of care and caution to not interfere in religious matters as promised in the constitution.

Contrary to popular opinion, a uniform civil code will not be intended for any particular religion or minority. The purpose is not to wipe out any religion's customs or ideology but to strengthen the foundation of secularism and prevent blatant oppression that occurs every day in the name of religion. No person irrespective of their religion being a minority or a majority need have any qualms about a uniform civil code as its aim is to simply bring in gender neutrality which has become utmost priority with changing times and society and thereby protect every citizen's constitutional and fundamental rights without their religion hindering that process.

That being said, a uniform civil code made sound appealing on paper and in theory but practically accounting for every religion's sentiments, thoughts and interests and drafting laws that satisfy every religion or faith will be an extremely daunting task. Also, washing out the insecurities that the minorities have about their identity being annihilated in the hands of the tyranny that the majority will have the power to wield with a uniform civil code will be an onerous challenge. Even though a uniform code will provide a coherent system of laws there is a high chance of tensions rising high in the event of a UCC being enacted especially when the BJP (a party not known to favour the majorities) is in power at the Centre. The Law Commission that has been conferred with the task of advising the government about a potential UCC must keep all this in mind and provide an ample report and this must be followed by the government endeavouring to choose to either enact or not enact a UCC for the benefit of the country in the name of strengthening the pillars of secularism and achieving gender equality and not in order to fuel their own political motives and communal interests