

**One Nation, One Rule: Need For Effectuating Uniform Civil Code In India**

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**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 and adoption. The Article 44 of the Constitution lays down that the State shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India. Over the years, there have been numerous judgements ruled by the Supreme court of India where it has directly or indirectly recommended the Central Government to frame and implement a Uniform Civil Code. The basic premise of this paper is that Uniform Civil Code is necessary for achieving true democracy in India.

**KEY WORDS:** Uniform Civil Code, Gender discrimination, Democracy, Directive Principles, Constitutional Morality.

*“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and the next place, oblige it to control itself.” – James Madison*

*“Uniform Civil Code is a constitutional mission and an institutional reorientation process to govern different religious and cultural communities by common laws of the land in order to create a sense of social homogeneity and national identity. Uniform civil code is an eclectic and progressive corpus juris with an Indian flavour which abounds a reformative, pro-active and creative legislative policy to establish an integrated society whose civil laws reflects a sense of basic secularity, social homogeneity and national identity.” - V.R.Krishnalyer<sup>3</sup>*

**INTRODUCTION**

According to P.B. Mukharjee, the term ‘Uniform Civil Code implies the idea of unification of various personal laws of different communities within the framework of uniform value system, embracing the marriage, divorce, maintenance, inheritance, etc., and other civil laws of a plural society.’<sup>4</sup> The Article 44 of the Constitution that declares that the state shall endeavour to secure the citizens a Uniform Civil Code. This Article finds a place under Part IV of the Constitution that deals with Directive Principles of State Policy, which are not enforceable in 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 law-making.<sup>5</sup> The significance attached to the Directive Principles was recognised in the famous case *Minerva Mills v. Union of India*,<sup>6</sup> where the Supreme Court held that the Fundamental Rights must be harmonised with the Directive Principles and such harmony is one of the basic features of the Constitution.

**BRIEF HISTORICAL BACKGROUND OF ARTICLE 44**

Though the concept of Uniform Civil Code has gained prominence recently, it has been discussed for a long period of time, most notably post-independence, because the British colonists always adopted a divide and rule tactic. This may be observed in *The Lex Loci Report of October 1840*, which emphasised the importance of keeping concepts such as Uniform Civil Code outside. Additionally, the *Queen’s 1859 Proclamation* vowed to abstain from interfering in religious affairs. However, this was not consistent with the point of view of India’s founding fathers and notable leaders such as Jawaharlal Nehru and Dr. B.R Ambedkar who fought for a Uniform Civil Code during the constitution’s drafting process following independence. However, to avoid resistance from religious fundamentalists and a general lack of knowledge on the subject at that time, they included the Uniform Civil Code in the Directive Principles of State Policy.

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3 V. R. Krishna Iyer, *Law and Religion*, Deep and Deep Publications, New Delhi, 1984, 74.

4 P.B. Mukharjee, *The Critical Problem of the Indian Constitution*, 1987, 53.

5 Article 37.

6 *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

An objection was taken to this provision in the Constituent Assembly by several Muslim members who apprehended that their personal law might be abrogated. This objection was met by pointing out: (i) that India had already achieved a uniformity of law over a vast area; (ii) that though there was diversity in personal laws, there was nothing sacrosanct about them; (iii) the secular activities, such as, inheritance, covered by personal laws should be separated from religion; (iv) that a uniform law applicable to all would promote national unity; and (v) that no legislature would forcibly amend any personal law in future if people were opposed to it.

In this connection, reference may also be made to the discussion under Art. 25 which guarantees freedom of conscience and profession, practice and propagation of religion. However, secular activity associated with religious practice is exempted from this guarantee. It could, therefore, plausibly be argued that personal laws pertain to secular activities and hence fall within the regulatory power of the state.

Not much progress has so far been made towards achieving the ideal of a uniform civil code which still remains a distant dream. The only tangible step taken in this direction has been the codification and secularisation of Hindu Law. The codification of Muslim Law still remains a sensitive matter though enlightened Muslim opinion appears to favour such a step.

### **IMPORTANT SUPREME COURT GUIDELINES ON UNIFORM CIVIL CODE**

The Supreme Court fills the lacuna in law created due to inaction of legislature and executive by declaring the law of the land under Article 141 and by issuing such order as is necessary for doing complete justice in any cause or matter under Article 142. Therefore, the approach of the Apex court also assumes significance in this regard.

Over the years, there have been numerous judgements ruled by the Supreme court of India where it directly or indirectly recommends Uniform Civil Code.

#### **(i) *Shah Bano Case***

The Supreme Court's decision in this case is regarded as a major milestone in highlighting the importance of UCC. The case concerned women seeking maintenance after being divorced under triple talaq. The women won in all lower courts, so the husband filed an appeal to the Supreme Court, which was dismissed because the Supreme Court ruled in favour of the wife as per the provisions of Criminal Procedure Code relating to "maintenance of wives, children, and parents" under Section 125. Maintenance has to be paid under Sec.125 of Cr.PC which applies to all irrespective of religion.<sup>7</sup>In addition, the court recommended that a Uniform Civil Code be established.

However, widespread agitation was carried out due to religious sentiments attached to the law, and as an outcome, the then-government under Shri Rajiv Gandhi, under pressure, passed the *Muslim Women's (Right to Protection on Divorce) Act* in 1986, rendering Section 125 of the Criminal Procedure Code inapplicable to Muslim women. As a result, the court was correct in emphasising the importance of UCC for having a common basis for jurisdiction.

#### **(ii) *Sarla Mudgal Case***

This case related to the issue of solemnizing of a second marriage by a Hindu spouse after converting to Islam. The court determined that a Hindu marriage solemnised in accordance with Hindu law may be dissolved only on one of the reasons listed in the *Hindu Marriage Act 1955*. Conversion to Islam and subsequent marriage would not automatically dissolve the Hindu marriage under the act, and therefore, a second marriage solemnised after conversion to Islam would constitute an offence under Section 494 of the *Indian Penal Code*. Changing one's religion will not change application of law. Muslim law will apply only if the first marriage was performed under Muslim Law. This made a need of UCC as it creates an ambiguous policy of marriage due to discrepancies between religious laws.

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<sup>7</sup>*Mohd. Ahmed Khan v. Shah Banoo Begum*, AIR 1985 SC 945.

The Supreme Court regretted that Article 44 of our Constitution has remained a “dead letter.” It emphasised the need for framing a common code throughout the territory of India. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.<sup>8</sup>

(iii) **John Vallamattom Case<sup>9</sup>**

It was the case in which Section 118 of the *Indian Succession Act* was declared unconstitutional after John Vallamattom challenged it on the grounds that it discriminated against Christians by imposing unreasonable restrictions on their willed gifts for religious or charitable purposes. This case further demonstrated the inconsistencies under religious laws.

(iv) **Daniel Latifi Case<sup>10</sup>**

In this case, *Muslim Women’s (Right to Protection on Divorce) Act, 1986* was challenged for violation of Articles 14,15 and 21 of the Constitution. The primary point of contention was the amount paid throughout the *iddat* period. In the instant case, the Supreme Court has discussed the problem of a Muslim divorcee woman. Liberally interpreting S. 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court has ruled that a Muslim husband is liable to make provision for the future of the divorced wife even after the *Iddat* period.

The Supreme Court upheld the act’s constitutionality but interpreted it in accordance with Section 125 of the Cr.P.C., holding that the amount received by a wife during the *iddat* period should be sufficient to support her during the *iddat* period as well as for the remainder of her life or until she remarries. This case shows how universally applicable law should prevail over unjust religious laws.

But such piecemeal attempts by the Courts to bridge the gap between personal laws cannot take the place of a common civil code. These problems can be eliminated only if a law is made in conformity with the present day social and economic realities. The orthodox Muslim opinion had characterised this ruling as anti-*shariat* while the liberal opinion accepted the ruling as progressive.

The Court has time and again reiterated its views on the need to have a Uniform Civil Code in the country. The Court emphasized that Art. 44 is based on the concept that there is no necessary relation between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Art. 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 in Arts. 25, 26 and 27. The Hindu law though of a sacramental origin has been secularised. The Court has pointed out that successive governments in India till date have been wholly remiss in their duty of implementing the constitutional mandate under Art. 44. Accordingly, the Court has again urged the Government of India to have a fresh look at Art. 44 and “endeavor to secure for the citizens a uniform civil code throughout the territory of India.”

We have thus seen that the Apex Court has continued to emphasize that a common civil code will help the cause of national integration by removing the contradictions based on ideologies.

**STAND OF THE PAST AND PRESENT GOVERNMENT**

The former Congress governments did not bring a Uniform Civil Code citing that the minorities should themselves come forward with such a demand. The Bhartiya Janata Party (BJP), which has been in power since 2014 had stated in its general election manifesto that, “BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonising them with the modern times.”<sup>11</sup>

However, the present government too has not been able to put this into practice because of pressure from all quarters. The current government brings measures like increasing the age of girl child to 21 for marriage which is a laudable step to ensure gender equality but it needs to think how to ensure the overall development of the society including women by

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8 *SarlaMugdal v. Union of India*, AIR 1995 SC 1531.

9 *John Vallamattom v. Union of India*, 2003 6 SCC 611.

10 *Daniel Latifi v. Union of India*, AIR 2001 SC 3958.

11 <http://cdn.narendramodi.in/wp-content/uploads/2014/04/Manifesto2014highlights.pdf>

bringing in a UCC and how to balance the aims of Article 51 A (f) and Article 51 A(e) of the Constitution that deals with the aspects of valuing and preserving the rich heritage of composite culture and renouncing practices that are derogatory to the dignity of women respectively.

The BJP led NDA government in Union made a reference to the Law Commission in June 2016 to examine matters in relation to a Uniform Civil Code as the Law Commission exists for the purpose of conducting studies on controversial legal issues and to recommend solution in that regard.

It is a pity that different governments that came at the Centre did not have the political will to frame or implement UCC. Of course a government committed to democratic ways may not like to stifle the sentiments of any section of the electorate. But that excuse certainly cannot absolve any government of its solemn constitutional duty to win the confidence of all the citizens and prepare them mentally, emotionally and psychologically, to gradually accept the social goals laid down for them by the Constitution. It is open to the ruling party in parliament, if it so chooses, to seek an amendment to the Constitution with a view to repealing Article 44. But so long as the mandate continues to exist on the statute book, it is outside the jurisdiction of the government and the political party in power to declare that it will not be implemented in any degree merely because of political reasons. Much is to be done by various organs of the state towards “endeavouring” to “secure” a Uniform Civil Code for the citizens. The above survey of the progress so far made in that behalf and of the current trends indicates how disappointingly little has been achieved and how very much stupendous a task still lies ahead.

#### **REPORT OF THE LAW COMMISSION**

The Union Government made a reference to the Law Commission of India in June 2016 to examine matters in relation to a Uniform Civil Code. The Commission presented its report after two years on the issue in the form of a Consultation Paper on Reform of Family Law on the 31<sup>st</sup> August 2018. The Commission, in its consultation paper, observed that a uniform is neither necessary nor desirable at this stage and pointed out the provisions of Sixth Schedule and Article 371 A of the Constitution as one of the main problems with feasibility in instituting a uniform civil code. Sixth Schedule and Article 371 A provide certain protections or rather exceptions to the States of Assam, Meghalaya, Tripura, Mizoram and Nagaland with respect to family law.<sup>12</sup>

#### **NEED FOR UNIFORM CIVIL CODE**

We shall now turn our attention to more prominent arguments for the need of UCC in India.

##### **(i) Gender Equality**

India has a history of severely patriarchal and misogynistic traditions perpetuated by society and ancient religious norms that continue to dominate family life. These traditions and norms subject Indian women to subjugation and cruelty. One such example is that men are typically accorded superior special status in succession and inheritance affairs. Additionally, the UCC will eliminate these disparities and contribute to the improvement of women’s conditions in India.

##### **(ii) More Equitable Legal Ecosystem**

India faces a serious problem with personal laws due to their bias toward patriarchy and age old customs and values. Khap panchayats exist at many places and they continue to issue verdicts that violate our constitution, and no action is taken. Human rights are abused throughout our country through honour killings and female foeticide. By legalising personal laws, we’ve established a parallel court system based on thousands of ancient values. By eliminating such loopholes, the Universal Civil Code would tip the balance in favour of society.

The UCC aims to provide protection to vulnerable sections while also promoting nationalistic fervour through unity. When enacted the code will work to simplify laws that are segregated at present on the basis of religious beliefs like the Hindu Code Bill, *Shariat* law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

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<sup>12</sup> Available at [www.lawcommissionofindia.nic.in/reportCPonReformFamilyLaw.pdf](http://www.lawcommissionofindia.nic.in/reportCPonReformFamilyLaw.pdf).

**(iii) National Integration**

A Uniform Civil Code will contribute more to India's integration than at any point since independence. Much of the resentment stems from some religious sects receiving preferential status under the law, which may be eliminated with a consistent civil code. It will contribute to the unification of all Indians, regardless of caste, religion, or tribe, under a single national civil code of conduct similar to that found in criminal and other civil laws.

**(iv) Constitutional Vision of Equality**

While Muslims are permitted to marry more than one woman in India, a Hindu or a Christian will face prosecution for doing the same. Similarly, there are significant disparities between many religious-related regulations. Equal laws in the areas of marriage, inheritance, family, and land are required. Here UCC will serve to bring not only uniformity in law ensuring greater equity but also in streamlining the legislative and judicial processes.

**(v) Transparency in Political Processes**

The concept of a Uniform Civil Code will also aid in reducing vote bank politics, which is practised by most political parties during every election. If all religions are subject to the same laws, there will be no room for politicising issues of discrimination, concessions, or special privileges enjoyed by a particular community on the basis of their religious personal laws.

**(vi) Authentic Secularism**

As we all know, secularism is a critical aspect of our nation, as reflected in our constitution's preamble. At the moment, we practise selective secularism, which means that we are secular in some areas but not in others. A Uniform Civil Code requires all citizens of India to adhere to the same set of laws, regardless of whether they follow Hinduism, Islam, Christianity or Sikhism. A Uniform Civil Code does not mean that people's freedom of religion will be restricted; it simply means that everyone will be treated equally which will indeed be authentic secularism.

**(vii) Keeping Pace with Global Developments**

A Uniform Civil Code has become the hallmark of a modern progressive nation's legal structure. It demonstrates the nation's transition away from caste and religious politics. While our economic growth has been one of the fastest in the world, our social development has been non-existent. Indeed, it is possible to argue that we have degraded socially and culturally to the point where we are neither modern nor traditional. A unified civil code will aid in making us a modern and liberal democracy.

**CONCLUDING REFLECTIONS**

As we have discussed above, Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. It is necessary that law be divorced from religion. With the enactment of a uniform code, secularism will be strengthened; much of the present-day separation and divisiveness between the various religious groups in the country will disappear, and India will emerge as a much more cohesive and integrated nation. The earlier we realize it, the better for our society and nation.

Every right thinking person appreciates the difficulties involved in bringing persons of different faiths and persuasions on a common platform, but, nevertheless, a beginning has to be made if the Constitution is to have any meaning. 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.

Constitutional Morality requires that a Uniform Civil Code is framed and implemented in India at the earliest. This dynamic shift would not only assist in ending gender-based oppression but would also strengthen the nation's mainstream fabric and advance unity. There is a need to alter our social framework, which is rife with inequalities, divisions, and other factors that conflict with our Fundamental Rights. With the passage of time, the necessity for a UCC for all citizens, regardless of religion, has arisen, ensuring the protection of their critical and constitutional rights. Finally, the lack of a standard civil code is damaging to the aim of achieving true democracy, and this must change. In sum, a Uniform Civil Code will help us in our transition from a feudal society to a modern and liberal democracy.