

Uniform Civil Code

The Uniform Civil Code (UCC) is a proposed legal framework in India that would codify and apply a set of uniform laws related to personal matters such as marriage, divorce, adoption, and inheritance to all citizens, regardless of their religion. Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, 'Uniform Civil Code' is explicitly mentioned in Part 4, Article 44 of the Indian Constitution. Article 44 says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

1. Historical perspective

1.1 Pre-Independence period

The Lex Loci Report of October 1840 stressed the importance and necessity of uniformity in the codification of Indian law, relating to crimes, evidence and contract. But, it also recommended that personal laws of Hindus and Muslims should be kept outside such codification.

The Queen's 1859 Proclamation promised absolute non-interference in religious matters.

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

B.N Rau Committee of 1941, officially known as the Hindu Law Committee was tasked mainly to examine the question of the necessity of common Hindu Laws. The Hindu Law Committee recommended a codified Hindu Law which would give equal rights to women in keeping with the modern trends of the society. However, it must be mentioned that its focus was primarily on reforming the Hindu Law in accordance with the scriptures on this topic but were endless. The Hindu Code Bill lapsed and was resubmitted only in 1952.

1.2 Post-Independence Period

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

The Hindu Code Bill was drafted by Dr. B R Ambedkar to reform Hindu laws, which legalized divorce, opposed polygamy, gave rights of inheritance to daughters. Amidst intense opposition of the code, a diluted version was passed via four different laws, namely, the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoption and Maintenance Act, 1956. On the other hand, Shariat law of 1937 governs all personal matters of Indian Muslims in India. It clearly states that the State shall not interfere in matters of personal disputes, and a religious authority would make a declaration based on his interpretation of the Quran and Hadith.

In 1954, the Special Marriage Act was passed which provides for marriage of any citizen irrespective of religion, thus, permitting any Indian to have their marriage outside the boundaries of any religious personal law.

2. Role of Judiciary

In *Mohd. Ahmed Khan v. Shah Bano Begum*, Shah Bano Begum was a 73-year-old woman who sought maintenance from her husband, Muhammad Ahmad Khan. He had divorced her after 40 years of marriage by triple Talq and denied her regular maintenance. The Supreme Court ruled in her favor in 1985 under the “maintenance of wives, children and parents” (Section 125) of the CrPC, which applied to all citizens irrespective of religion. It further recommended that a uniform civil code be set up.

The Shah Bano case soon became nationwide political issue and a widely debated controversy. The orthodox Muslims felt that their communal identity was at stake if their personal laws were governed by the judiciary. Therefore, in order to undo the effect of the judgement delivered in Shah Bano case the Parliament passed the Muslim Women’s (Protection of Rights on Divorce) Act 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

In *Danial Latifi v. Union of India*, The Muslim Women’s (Protection of Rights on Divorce) Act, 1986 was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her

future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

In *Sarla Mudgal v. Union of India*, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise 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 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).

In *John Vallamattom v. Union of India*, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr. Vallamatton 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. Further, Khare stated that, “Article 44 provides that the State shall endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. It is a matter of great regrets 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”.

3. Advantages of Uniform Civil Code

i. Provide Equal Status to all Citizens

A secular democratic republic in order to provide equal status to its citizens must have a common civil and personal law irrespective of their religion, class, caste, gender, etc.

ii. Promote Gender Parity

It is generally observed that in almost all religions men are granted preferential status in the matters of succession and inheritance which results in discrimination towards women. Thus, the Uniform Civil Code will promote gender equality and will bring both men and woman at par.

iii. Accommodate the aspirations of the young population

The social attitude and aspiration of the young population is shaped by universal and global principles of equality, humanity and modernity. Thus, the enactment of Uniform Civil Code will help in utilizing their full potential towards nation building.

iv. Support National Integration

All citizens are treated equally before the court of law whether it is criminal laws or other civil laws (except Personal Laws). Thus, the implementation of Uniform Civil Code will grant equal set of personal laws to all, resulting in the end of politicization of issues of the discrimination or concessions or on the other hand exceptional benefits appreciated by a specific community on the basis of their specific religious personal laws.

v. Bypass the contentious issue of reform of existing Personal Laws

The existing personal laws of all religions are based upon the upper-class patriarchal notions of the society. Thus, the codification and implementation of the Uniform Civil Code will destroy the sanctity of the patriarchal orthodox people or will oppose it profusely.

4. Disadvantages of Uniform Civil Code

i. Practical difficulties due to diversity in India

It is difficult to come up with a uniform set of rules for personal issues like marriage due to tremendous diverse culture in India across the religions, sects, castes, states, etc.

ii. Perception of Uniform Civil Code as encroachment on religious freedom

Many communities, especially the minority communities believe that the Uniform Civil Code is an encroachment on their right to religious freedom. According to them, the Uniform Civil Code will neglect their traditions and impose rules which will be mainly influenced by the majority religious communities.

iii. Interference of State in Personal Matter

Articles 25 to 28 of Indian Constitution provide the Right to Freedom of religion. But the scope of the freedom of religion will get reduced with the codification of Uniform Civil Code.

iv. Sensitive and Tough Task

The implementation of Uniform Civil Code is a sensitive and tough task as it will bring many changes like issuing judicial pronouncements that ensures gender equality, adopting expansive interpretations on marriage, maintenance, adoption and succession with a view that one community should ensure benefits from others. The task is very demanding and

the government would be expected to be sensitive and unbiased while dealing with the minority and majority communities otherwise it would turn out to be more disastrous in the form of riots and communal violence.

India has a unique blend of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family-related law in a single statute book for all Indians which is acceptable to all religious communities who co-exist in India. However, a majority of them believe that UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood. The differences of opinion are on its timing and the manner in which it should be realized. Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve a consensus. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with dignity, something which personal laws have so far failed to do.