

## UNIFORM CIVIL CODE - ITS NEED IN INDIAN SOCIETY

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### INTRODUCTION

India is a mixture of various religions, and cultures and the largest democracy in the world which abides by the principle of secularism. The Constitution of India guarantees fundamental rights to the people under Part III. One of them is the Right to freedom of religion under Article 25 and Article 26. On the other hand, part IV talks about the Directive principles of state policy which also includes Article 44 i.e., the Uniform Civil Code (UCC). But there are a lot of controversies surrounding this idea and its implementation in a country like India. Though the concept is existing for a long time, it has become debatable in recent times due to the manifesto that was put forth by the BJP in the Lok Sabha elections in 2019. Recently the Supreme Court of India referred to the UCC implemented in Goa while deriving its judgment, where it also legitimized the Portuguese civil code of 1867. In this regard, Delhi High Court also received quite a several petitions supporting the idea of UCC across the country. But the topic of debate is whether the personal laws will be replaced with UCC and that is not accepted by many of the people in the country as the religious laws are considered to be based on scriptures and customs of their particular religions. The concepts that the UCC will include are marriage, divorce, adoption, etc., which are personal and so the people are against any interference from the government and also from the judiciary with their religious practices in such matters in the form of UCC. In light of all the political aspects and political domination in the country, this paper will further discuss and help to understand the Uniform Civil Code, its need, the bright and dark side of it along with the controversies on this topic.

### ANALYSIS

Article 44 says, 'The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.'<sup>2</sup> It is discussed in part IV of the constitution which talks about Directive Principles of State Policy and does not hold any justiciability. Since the government of the BJP came into power, the topic of UCC has become a more debatable topic together because it was proposed in the manifesto. There were instances in the country which

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<sup>2</sup> Constitution of India, 1950, Art. 44, No. 01, Act of Parliament, 1950 (India).

show the dire need for implementation of the Uniform Civil Code in India but the protests and noticeable population being against this is a hurdle to the same. UCC refers to having a common/single law instead of various personal laws for every citizen of the country irrespective of religion, etc. As mentioned, it does not hold any justiciability in the eyes of law that is one cannot file a case on its violation. It is a mere goal that the nation looks up to. Therefore, the point of the question lies here if it is not guaranteed by the constitution what is the point in its existence and why is it attracting a lot of legal, political, and societal attention. Personal laws are those which apply to each respective religion, etc.

India is a secular country in its very nature and includes a vast number of cultures, traditional practices, and religions with its own beliefs. Concerning these practices, every religion framed its law to deal with their matters under law. These laws include codified (Hindu Law) and uncodified laws within its ambit. Personal laws include the most sensitive and personal topics of an individual which are also related to their religion i.e., marriage, divorce, succession, inheritance, guardianship, custody, adoption, and maintenance.

As stated above, Muslim law was inherited from Quran and not a codified one, unlike Hindu law. Goa is the only state which is governed by The Portuguese Civil Code and successfully implemented UCC in the state. In recent years, there were many cases where the rights of people were obstructed in light of personal laws (especially for Muslim women). So, the people were looking up to the Supreme Court for justice against the violation of their fundamental rights.

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Article 44 Vs. Article 25- Freedom of Religion of the Constitution: The huge number of people in the country is of the view that the Uniform Civil Code will violate their right to freedom of religion guaranteed under article 25 of the Indian Constitution. This is one of their strong excuses made to avoid the implementation of UCC in the country. People contend that article 25 of the Constitution is a guaranteed right of the people and is more powerful than Article 44 as the former is enforceable in the court of law and the latter is not as it is a part of DPSP. Opposing this contention, the people arguing for the implementation of UCC in India state that secular activities are excluded from the purview of article 25 and are not dealt with by religion but by the state. Though it is a controversial debate of the time, we can't deny the need for UCC in India.

## INSECURITIES IN THE MINDS OF PEOPLE

The other major challenge in the implementation of the Uniform Civil Code is the insecurities in the mind of a sect of in India. The Hindu personal laws are codified and followed by the majority population and also, and they are separated from the religion. Now the fear is that these majority laws are being imposed on the other citizens as well, irrespective of their religion and against those non-Hindu personal laws set aside. For example, the Triple Talaq case where the personal law was not followed led to major protests in the Muslim community. In the same view, recently, the All-India Muslim Personal Law Board opined that the idea of implementing UCC in India is unconstitutional and mentioned that it is an “anti-Minority” move. The board also stated that debating on UCC and making it a part of the manifesto is a mere practice to divert society from other major issues like inflation and unemployment. Apart from these, the incident of Ram Janmabhoomi is the other one that added fire to the Hindu-Muslim differences. This temple in Ayodhya, Uttar Pradesh is regarded as the birthplace of Lord Rama by the Hindu community and the local Muslims claimed it to be the Babri Masjid built by the emperor named Babar. In January 1986, a group of Hindus opened the main gate of the temple for the Hindu worshippers and this resulted in large protests and backlash between the Hindu and Muslim communities. Post the unanimous judgment of a constitutional bench on this case, ruling in favor of Hindus by allowing them to have a temple at the place of Masjid and allotting 1.54 acres of land elsewhere to Muslims, the backlash resulted in huge violence across the areas like Uttar Pradesh, Madhya Pradesh, etc. This case is the other landmark judgment that resulted in the insecure thoughts of the Muslims. They believed that Hindu secularism is discriminatory and that the Hindus are trying out to wipe out Islam in India. With these assumptions, they are opposing the idea of UCC with the fear of having the imposition of Hindu law over them.

However, the actual idea of the Uniform Civil Code is not the same as the above viewpoint. It is not imposing the codified Hindu law on the other groups but bring all the groups irrespective of religion under the same roof and imposes the Uniform Civil Code by protecting the constitutional rights of every Indian. In 2021, a single judge bench of Allahabad High Court, Justice Suneet Kumar while hearing 17 petitions regarding inter-faith couples’ protection, held that Uniform Civil Court is mandatory in India. Despite the above issue of certain people’s view, the other is the implementation of UCC itself. This it is meant that implementing UCC in such a diverse country like India all of a sudden just for the sake of implementing it and without any proper planning will create a devastating situation in India which may also result

in people going against the government. Recently, Qwaisi, the AIMIM leader in a meeting stated that India does not need UCC. He based his statements on the Goa Civil Code where polygamy is allowed as per their law if the woman/wife fails to deliver a boy child before she turns 30 years old. He criticized BJP for remaining silent on this matter despite being aware of this. The majority of the country is hoping that UCC will give some freedom and rights to underprivileged women (especially Muslim women) who are not treated to be equal to the men in society. If that does not happen, then there's no point in the implementation.

### **EFFECT OF RECENT AMENDMENTS (ARTICLE 370 & TRIPLE TALAQ)**

The BJP government made two drastic changes or amendments to the law. These include the abrogation of Article 370 of the Constitution and the Triple Talaq. After the Triple Talaq Bill, the majority of Muslims were against it and even a few women argued about the intervention of the Supreme Court in their laws and religion. On the other side, the country is aiming to implement UCC when these arguments reminded the need to reconsider the thought before bringing it to the wardrobe. Criminalizing Triple Talaq and ensuring equal rights to Muslim women as any other woman of other religions led to a lot of debate and unrest in the Muslim community. This made them insecure with the thought that the country is supporting to impose majority law on them. By abrogating Article 370 from the constitution the government removed the special status of Jammu & Kashmir and made the common law applicable to the state. This is one of the major steps toward UCC. However, the Supreme Court on the other side pointed out that the government is just to implement UCC but failed to do so in the last 63 years.

### **JUDICIAL PRONOUNCEMENTS**

#### **Mohd. Ahmad Khan v. Shah Bano Begum<sup>3</sup>**

In this case, a Muslim woman was asked to get out of the house by her husband after 43 long years of their marital relationship. Later, the woman seeking maintenance from her husband, approached the court of law after her husband pronounced triple talaq three times. He stated that after he divorced his wife, if he pays her maintenance, then their relationship will be considered "Haram" from that time as in Muslim Law the maintenance is only given till the iddat period of the wife and not after. But, in the lower court, it was held that the woman was allowed to get Rs 25/- per month as maintenance from her husband. Aggrieved by this decision

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<sup>3</sup> Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.

she approached High Court which increased her maintenance to Rs. 179.20/- per month. After the man challenged this decision in the Supreme Court major questions were raised. The applicability of section 127 and section 125 of Cr. P.C on Muslim divorced women was questioned in the court of law. In this case, further, Justice Y.V. Chandrachud upheld section 125 of CrPC over the Muslim personal law and held that the woman was entitled to get the maintenance till the time she remarries another person as she is unable to maintain herself along with the five kids they have. It was held that Article 125 of CrPC is equally applicable to Muslim women as every other woman of any religion. The only thing to be considered here is the incapability of the woman to maintain herself after divorce along with the husband's capability to maintain her and her children and not the religion. Though this judgment resulted in huge unrest in the Muslim communities, this directed the country to the Uniform Civil Code. In light of this judgment, Justice Chandrachud stated that the idea of UCC in Article 44 remained a dead letter and there's a need to get this implemented in the current times in the country.

#### **Sarla Mudgal, President, Kalyani v. Union of India<sup>4</sup>**

In this case, a woman filed a petition against her husband stating that he married another woman during her lifetime by converting to Islam from Hindu. The previous marriage with the victim was done as per the Hindu rites and he converted to Islam for the sake of second marriage as in Muslim law, a man can have four legal wives at a time. Similar to this case at that time there were other petitions no. 424 of 1992 and no. 509 of 1992 were filed on the same grounds. The applicability of section 494 IPC, 1860 was questioned in these cases as in the Muslim personal law, polygamy is allowed in "Shariat Act". The court addresses these issues and commonly held that if the first marriage is performed under the Hindu rites, the second marriage even after conversion is void under section 494 of IPC. Also, conversion just for the sake of marriage, without belief in the Muslim principles is not a valid conversion. This case is the other example to show the need for UCC in the country for better justice, especially for Muslim women. The Supreme Court bench, in this case, directed the Indian government to understand the need for UCC and work towards its successful implementation.

#### **Ahmedabad Women Action Group (AWAG) v. Union of India<sup>5</sup>**

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<sup>4</sup> Sarla Mudgal, President, Kalyani v. Union of India, AIR 1995 SC 1531.

<sup>5</sup> Ahmedabad Women Action Group (AWAG) v. Union of India, AIR 1997 SC 3614.

This petition was filed under article 32, challenging polygamy (in Muslim Law) under articles 14 and 15 of the constitution. The absence of mutual consent in the Muslim unilateral divorce (Talaq) was challenged under Articles 13, 14, and 15 of the constitution. A few other sections under the Hindu Marriage Act, 1955 (section 2), Hindu Succession Act, 1956 (section 2(2), 5(ii) & 5(iii), section 6 read with section 30), Hindu Minority & Guardianship Act, 1956 (section 3(2), sec. 6 & 9), Guardians and Wards Act, 1890 (sec. 43 to 46) were challenged in the court of law. The Supreme Court simply refused to hear these petitions stating that making amendments is not the discretion of the judiciary but the legislature. Court held that there is an immediate need to introduce and implement UCC in the country as many such provisions of the personal laws were violative of the fundamental rights of the Indian constitution.

### **Danial Latifi v. Union of India<sup>6</sup>**

This is the other landmark judgment recognizing the need for UCC in the country. The Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged in this writ petition. It was stated that this particular act was brought into force for the sake of overruling the Shah Bano Begum judgment which held that a Muslim is entitled to maintenance after the iddat period if she is incapable to maintain herself and until the time, she remarries another man. Therefore, this act was a result of that judgment and was challenged on the ground that it is violating Articles 14, 15, and 21 of the constitution. It was contended that this act is discriminatory against Muslim women and section 125 CrPC must apply equally to every woman irrespective of religion. Supreme Court, therefore, held the act to be valid and not unconstitutional on the said grounds. This is the other such case that shows the dire need for UCC in the country to avoid such injustice to the people based on religion (especially Muslim Women).

### **Shabnam Hashmi v. Union of India<sup>7</sup>**

This case is about the adoption of children and the writ was filed under Article 32. The Muslim person who filed a petition adopted a daughter of another religion. He filed this writ praying the court to give him the status of parent of that adopted daughter which is against the Muslim personal law. The All-India Muslim Law Board objected to this and stated that he will be a mere guardian and not a parent and was against the applicability of Juvenile Justice Rules, 2007 on Muslims. The court held that the Act is applicable irrespective of religion. The court upheld

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<sup>6</sup> Danial Latifi v. Union of India, AIR 1985 SC 945.

<sup>7</sup> Shabnam Hashmi v. Union of India, (2014) 4 SCC 1.



the adoption stating that the act is a fundamental right under the constitution under Article 21 and granted the status of parent to the adopted daughter. As UCC aims to bring a common law to everybody irrespective of religion, it includes the matters like marriage, divorce, succession, guardianship, and adoption within its ambit. Therefore, the importance of the Uniform Civil Code was recognized by the court once again in this court.

### **Shayara Bano v. Union of India<sup>8</sup>**

In this case, the practice of triple talaq where only men have a right to divorce their wife by pronouncing talaq three times was challenged in the court of law. The husband of Ms. Shayara Bano divorced her by pronouncing triple talaq. The said practice was challenged saying that it is discriminatory as this right was partial to only men and not women, also the consent of women was immaterial for this act. The constitutional bench of the Supreme Court held that pronouncing triple talaq is an unconstitutional act and therefore it was declared to be a crime thereafter. In this case, again, the matter of the Uniform Civil Code was raised as the bench opined that UCC can bring an end to such discriminatory practices laid in the personal laws of any religion.

### **POSITIVE ASPECTS OF UNIFORM CIVIL CODE**

**Equal rights:** The main motive behind the idea of UCC as discussed is to implement a common law for every citizen irrespective of religion. In this era, we have different personal laws within our religions to deal with the most personal matters of an individual, like marriage, divorce, etc. Within those personal laws, women have different rights compared to men such as polygamy is allowed and not polyandry. This is where fundamental rights are at stake as they lack provide equality to every citizen. There have been many instances where the personal laws were challenged (a few discussed above). Here, UCC comes as a recue. It is the most prominent and suggested concept in recent times though debatable. As it is already a part of DPSP, it is not enforceable, but it is there. The better implementation of UCC in India will be a massive change for good for every citizen as the law will prevail and not religion. Every individual will be treated equally irrespective of religion, caste, gender, etc.

**Promotes gender equality:** As stated above, almost all the personal laws are leaning toward the men in society and discriminate against women. India is a male-centric society where men

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<sup>8</sup> Shayara Bano v. Union of India, AIR 2017 9 SCC 1.

are usually considered to be superior to women in matters of marriage, inheritance, succession, and also in the matter of divorce, women are shown to be inferior to men to take the decision, and the consent of women is immaterial. With UCC, this issue can be resolved. When there is a uniform law that prevails over the personal law, then every citizen is bound to follow the same. This ensures equality if it is properly implemented with a clear idea. Also, this will show its impact and influence on youth which results in a better future society.

**National integration:** Implementation of UCC replacing the personal laws will pave the way to avoid the politics within sensitive personal issues such as discrimination among the communities and the superiority of one community over the other. Apart from this, we have a few orthodox people who still believe that the change in personal laws will go against the sanctity and so they oppose it. Though we have the common criminal law and the civil law promoting equality, the existing personal laws are not at par with the same and are patriarchal. so, there is a need for UCC to promote equality between the communities and among men and women in all the religious communities.

**Secularism:** The idea of Uniform Civil Code promotes Secularism in the country, which is the basic structure of the Constitution. As it sights to implement uniform laws to whole of the country and not to force any single religious laws on the other, every religion will then be treated equally and even the deprived people will have access to their rights equally like the other. The majority-minority differences will end and secularism will prevail. A sense of unity and balance in the country persist.

## **NEGATIVE ASPECTS OF UNIFORM CIVIL CODE**

### **Implementing in a diverse country like India**

India is a diverse country that is bound by the principle of secularism in the basic structure of the constitution. We have a huge population and different cultured people. Implementing such a code by assuring gender equality and interpreting laws on personal issues from the personal laws, and amending them slightly will be a tough task that demands a lot of time and human resources. Upon that the government has to be unbiased with the communities to avoid any communal riots later. Practically, implementing UCC in such a country as India will be a challenging task for the government. We have people for and against UCC, in this scenario implementing it against the people who are not in support of it will also lead to unrest in society.



It is a tough task for the government to impose a uniform law for personal and sensitive issues like marriage and divorce because of the diversity in cultures and religions etc.

### **Insecurities in people's mind**

As already discussed earlier, people believe that UCC will encroach on their religious freedom, particularly for the non-Hindu's. Article 25 and 26 ensures the right to practice religion and the people believe that as the codified law is of the majority people and the other personal laws are not codified well as the Hindu laws, it was wrongly assumed that the Hindu law will be imposed on everyone against their rights. And the other part of the society irrespective of religion also have this conception that the UCC will not pay importance to their traditions and the scope of religious freedom will be ignored.

### **Is it the right time to implement the idea of?**

After the major opposition that the society faced after the controversies over the saffronization of the study curriculum, beef issue, jihad controversy, and the most recent hijab issue, it is understandable that the Muslim community (along with other groups) is not yet ready to face UCC in the country. Even post the judgment of the Shah Bano and Shayara Bano cases, there was a debate on the interference of the Supreme Court in the personal matters of the Muslims. Implementation of the Uniform Civil Code after noticing that the Muslims and certain other citizens are against the same will make the people more insecure and will attract them towards extremist ideas which will adversely affect society. However, any change in the religious or customary laws and practices which are close and personal to the people and even an attempt to outcast these practices will turn out to be a recipe for outrage and trouble which may result in violence in the traditional country like India.

### **CONCLUSION**

Educating people on the exact idea of the Uniform Civil Code in India is the most important aspect which the government has to aim before aiming for UCC directly to avoid the insecurities in the minds of certain groups or sects. Though it may not be clear out to most people it will help people think about it and understand. People may refer to the shining example that Goa has set to everyone in the matter of UCC. Though there are drawbacks to their law, it may be amended later and be accepted by the people. But the point to note here is the efforts that the state has put in in the successful implementation of the uniform law over

the state. UCC can be implemented through some primary features than directly imposing it in a full-fledged manner so that it gives time for people to accept the reform with time by understanding its very sense. Government can start with a great initiative by interacting politely with the people who are opposing UCC and understanding and addressing their concerns with the issue and sorting them out from their minds. This might help the people to analyses what the policy is all about and what it will change and how it will impact them. Once the people are confident about this and are ready to face such reform, the government with proper planning can implement the Uniform Civil Code in the country. It will also make the judiciary functions easy when there is a single law in the country to deal with in place of various personal laws. Thus, UCC will promote gender equality and justice, remove various patriarchal opinions of the religious communities and support the welfare of women in all the communities irrespective of religion and resulting in a better and promising society thereafter.

