

UNIFORM CIVIL CODE: DEMOCRACY BEYOND PERSONAL LAWS

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ABSTRACT

¹In any Democracy, we believe that the same law should apply to all people and treat everyone equally. This means that existing personal laws are based on religion like the Hindu Marriage Act. The Succession Act and The Muslim Personal Law application of acts will be technically dissolved. The Indian Constitution has mentioned y which UCC could be more profound and has given sense to use as article 44 of the Indian Constitution highlights that the state shall endeavor to secure a uniform court for civil matters for the national public through the territory of India. This indicates that the constitution is directing the government to set up all different communities and tribals together on matters that are administered by their respective personal laws. The government has formed a committee of legal counsel to research whether the state has the authority to bring uniform civil court. Counsels have given statement in favor and against the nature of the reasonable application of UCC some counsel said that issues like marriage divorce property rights comes under the concurrent list which is a list of 52 subjects on which laws can be made by both the centre and state. Various arguments arose against a uniform civil court. The main argument is that it violets the constitution's freedom to practice the religion of choice which allows communities to follow that personal law fundamental rights subcommittee of the constituent assembly of India deliberately did not include a UCC as a fundamental right in the constitution, Similarly, Tribal groups from different part raise their concern about the protection of their customs moved to the supreme court. In the eastern part of India tribal groups have existing customary laws that have primacy over federal laws. It was also argued that codified civil laws and criminal laws can apply to diverse personal laws and customs practices of various communities. The intention of the drafting committee was total uniformity however if so intention of the committee the framers have put them on the union list giving parliament all the power to legislate on them.

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¹ uniform civil code: an ignored constitutional imperative

HISTORY OF PERSONAL LAWS IN INDIA

In India when the constitution of India was being framed and values of pluralism were being discussed one social reform became a bone of contention it divided the constituent assembly, they debated for months but could not reach a consensus and finally they compromised over UCC. Independent India with many religions had different personal laws which further introduced. Apart from uniform laws as the personal view contradicting to it on which supreme court judgment and legislature gave a pitch to ease for uplifting religious norms different religious laws were also being made like:

1. The Hindu Marriage Act, 1955,
2. The Hindu Succession Act, 1956,
3. The Hindu Adoption and Maintenance Act, 1956.
4. Hindu Women's Right to Property Act 1937

Similarly, laws were also codified for Muslims,

1. Muslim Personal Law (Shariat) Application Act 1937
2. Dissolution of Muslim Marriage Act 1939

WHY DO WE NEED UCC?

²UCC shouts for the approach of common law for India, which would be the same and apply to all religious communities such as marriage, divorce, inheritance, and adoption. Right now, laws regarding marriage, divorce, inheritance, and adoption, for different communities are governed by different personal laws. It will not interfere with religious books. We need UCC for various reasons,

National integration: Un-ghettoization of Indian society, everyone plays by the same rules, and women and minorities will get the same laws as everyone. No applicable law in India up to this point has acknowledged same-sex marriages as legal and sad same-sex couples with many hurdles. Since the uniform civil code in India does not inspire hope for the LGBTQIA+

² <https://www.legalserviceindia.com/legal/article-5179-uniform-civil-code-need-of-the-hour-in-india.html>

community. It will be good for couples from different religions and different castes who may face discrimination.

Courts will benefit: High courts and district courts have millions of pending cases. Many of these cases are related to personal law conflict and complications which leads to dragged-out cases. It will alleviate the pendency problem.

IN WHICH AREA WE NEED UNIFORMITY?

It is important to know the areas where we need uniformity to be implemented and penalized. Some laws which are an example of the need for uniformity laws are:

1. Section 494, IPC: The Indian Penal Code, of 1860 describes bigamy. The said provision describes that any person who already has a spouse living additionally move to marry other people while being lawfully married to such spouse shall be punished with imprisonment of either order a term which may extend to seven years and shall also be liable to fine. Disregarding this uniform law is that a Muslim man is allowed to 4 marriages which is contradictory to penal laws. Now, uniformity cannot count as anyone is allowed to do as many marriages as much.

2. Hindu and Muslim law: Women have faced a lot of discrimination in their laws differently. Such could have been seen for Hindu women as an irrevocable failure of marriage is not a valid ground for divorce. As per Muslim law, the share in property for Muslim women is not equal. In Hindu law, women have a uniform share in property whereas Muslim women compared to males can inherit less than half the share after which Muslim women cannot demand maintenance for a long er period of time like other Indian women.

3. Child Marriage: The Indian procedure prescribes an equal age for marriage for all religions except some tribal communities which is 18 years for women and 21 years for men and which is also in the news to increase for development of society. If marriage is done under the given age criteria, then marriage is prohibited, and penalizing for solemnizing a child marriage given to anyone who performs, conducts, or directs any child marriage shall be punishable with imprisonment.

AN IMPORTANT CASE OF INDIAN PERSONAL LAW

Mohd. Ahmad Khan vs. Shah Bano Begum³

Bench: Y. V. Chandrachud (Chief Justice), Rangnath Misra, D A Dai, O Chinnappa Reddy, E S Venkataraman

The case is associated with the basic rights of Muslim women. It covers and defines sec 125 of CRPC and the applicability of criminal law to all religions.

Facts of the case: In this case, applicant Ahmand Khan married respondent Shah Bano Begum in the year 1932. In the period 1975, the applicant's husband took the respondent's wife out of his house, and in 1978 the respondent filed a petition under sec 125 of CRPC for maintenance. In the same year, the appellant divorced the respondent by an irreversible triple talaq and took protection since she is no longer his wife and he had already paid the maintenance during the period of Iddah which is required under Muslim Personal Law. He had no, obligation to maintain his wife. In the year 1979, the magistrate ordered the appellant to reward a nominal amount of rupees 25 every month by order of maintenance the high court of Madhya Pradesh increased the sum to 179.25 per month. The appellant has appealed to the Supreme Court by way of special writ petition.

Question of Law: The question that arose before the apex court was whether the provision of sec 125 of CRPC can be operational above the provision of the personal law that governs the parties and what role the court plays in taking a step towards the Uniform Civil Code which replacing personal law with a usual set of laws governing every citizen to article 14 of the Indian constitution.

Court Held: The court held that section 125 of CRPC was truly secular and the purpose of this provision was to ensure that there was a speedy remedy to those who did not have basic means to maintain themselves. The court further elaborated that if a person with sufficient means were found to neglect giving maintenance to any dependent section 125 of CRPC would be attracted. The rights under this provision would stand regardless of the personal laws of the parties. The court also held that the husband's liability to provide maintenance was not limited to the

³ 1985 AIR 945, 1985 SCR (3) 844

duration of Iddat but for as long as the wife failed to maintain herself or again married even when the Iddat period was over.

SUPREME COURT ON UCC

A Petition in question for UCC had been filed by Mr. Anoop Barnawal further which the Supreme Court squashed the petition on uniform civil code.⁴ The petition was even against by the central government which brace the policy of a uniform civil code, the cabinet ministers also came up with trust on the need for UCC law for uniformity among the nation. The Supreme Court squashed a petition demanding a Uniform civil code to detect that such issues are meant to be designed for the Parliament to decide and the legislature to introduce such a law. Supreme Court stated that the court should not be allowing the legislative to ratify a law.

The bench headed by Chief Justice of India DY Chandrachud clarified "We have not gone into merits we feel court is the incorrect forum and parliament alone can effectuate this".

An alternate solution to UCC: In my opinion, the state has power in various ways to implement laws that can be an alternate solution to UCC. The state can remove any social injustice likewise, when the Hindu code bill was brought the state by using all its powers removed all the problematic points.

Then to modify the Muslim law why UCC is especially needed?

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In my opinion, the legislation should remember that National Interest, Basic Human Rights, and the Right to Dignity come above all.

CONSTITUTION ON UCC

When the country was getting independent, we had a lot of limitations in front of us which were Economic limitations, Social, and Cultural however at that time the important rights protected as fundamental rights under the Constitution were:

1. Right to Equality
2. Right to Freedom

⁴ <https://www.hindustantimes.com/india-news/sc-closes-petitions-on-uniform-civil-code-leaves-issue-for-parliament-to-consider-101680103381069.html>

3. Right to Constitutional Remedies
4. Cultural and Educational Rights
5. Right to Freedom of Religion
6. Right against Exploitation

Important rights were guaranteed and protected under fundamental rights at that time the legislation thought that as the country developed and progressed, it would adopt new rights. However, if we talk about UCC as a right under the constitution we can understand it by Article 21 Right to education as the legislature and commission felt that the country has not developed, or progressed enough that we can provide free and compulsory education to the legislature and commission understood that until we do not make education compulsory the country will also not progress and as soon as this was realized an amendment was incorporated in Fundamental rights.

So, as a country progresses new rights are adopted as far as concluding the UCC could be considered and protected in a changing world.

PROS AND CONS

Pros of Uniform Civil Code

1. To provide gender equality
2. To provide equal status
3. To support the national integration
4. To bypass the contentious issues of reform of existing personal law.

Cons of Uniform Civil Code

1. Perception as an encroachment on religious freedom
2. Sensitive and tough task
3. Manner of introduction

4. Practical difficulties due to diversity

5. Interference of state in personal matters

CONCLUSION

In conclusion, the Uniform Civil Code is a compound and disputed issue that has been a topic of debate and discussion India as a nation is diverse and plurality any reform in personal laws should be done with caution, sensitivity, and to promote social justice and gender equality. UCC is not just a legal issue, it is a social and cultural issue, and it requires careful deliberation and community participation. The implementation of a UCC poses both challenges and opportunities. On the one hand, it could bring about greater gender justice by eradicating discriminatory practices embedded in personal laws and ensuring equal rights and opportunities for all citizens in my opinion state should filter all the personal laws according to today's day and age, and all those practices which are derogatory, discrimination which are against social justice should be declared unconstitutional.

