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# Amalgamation of Personal Laws into Uniform Civil Code in India

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## ABSTRACT

*Uniform Civil Code, is the idea to bring laws of all religions and classes/groups of sects within various religions under one big canopy, which will ensure equality, gender justice, and uniformity. Part IV of the Indian Constitution provides for Directive Principles of State Policy. Though these principles are guidelines and are not enforceable in a court of law however they are indispensable in the governance of the country. One such directive principle is given under Article 44 of the Constitution which creates an obligation on the state to enact a Uniform Civil Code. Specific ambitions of progressive society are aspired to accomplish. However, this notion is not plain vanilla. While post 70 years of independence, many questions have been answered and many would be answered in the forthcoming years; but one dilemma shivers the spine, one question remains unanswered, will you sacrifice these personal laws? This paper analyzes the provisions laid down for the Uniform Civil Code under Article 44 of the Indian Constitution. We begin by looking at the constituent assembly debates, moving on to understanding the perspective of various religious groups and viewpoints on gender justice, and finally proposing our stance of implementation by critically answering the aforesaid question.*

**Keywords:** *Uniform Civil Code, Implementation of uniform civil code*

## I. INTRODUCTION

The Uniform Civil Code (UCC) in India proposes to replace the personal laws which are based on the scriptures and customs of each major religious community in the country, with a common set of regulations to govern every citizen of the country. The analysis for the enactment of Uniform Civil Code has drawn various pros and cons which may be reflected if this Code becomes operative. The Uniform Civil Code will not only promote the gender equality but it will also facilitate the national integration by ensuring zero tolerance to discrimination on various grounds as all citizens, irrespective of the religion practiced by them, shall be governed by a single civil code. According to, the Amendment of 2005 under the Hindu Succession Act, 1956 has been celebratory, since Section 6 now provides for the equal rights

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of a woman to be a coparcener in the family property.

However, it is practically tough to emanate a common and uniform set of rules for personal issues like marriage, divorce, succession of property, adoption, etc. due to tremendous cultural diversity prevalent in India across the religions, gender, castes, states due to which, the enforcement of the Uniform Civil Code may hamper the secular nature of India.

### **Research Question**

Will implementation of Uniform Civil Code affect the nation in a positive way or a negative way and if affects the nation in a negative way then will it violate any of their rights?

### **Scope Of Research**

This paper is mainly based on the issue of implementation of Uniform Civil Code which has been emerged in India's political discourse recently, mainly because Muslim women, being adversely affected by the personal laws, have begun knocking the doors of the Supreme Court to uphold their fundamental rights to equality and liberty.

### **Objective Of Research**

The main objective of this paper is to make viewer updated about the concept of Uniform Civil Code, and what's the main objective behind implementation of a Uniform Civil Code in India.

## **II. LEGAL PROVISIONS**

The Constitution lays down a provision for Uniform Civil Code under Article 44 as Directive Principle of State Policy which states that "The States shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Hindu Law in India is codified under the statutes namely, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Disposition of Property Act, 1916.

As the time passed, the bad notions, about the Hindu religion took its roots in the earth and the rigid systems of Varnas started glorifying. The onset of the Varna system in India also led to the inception of various other evil practices which hindered the growth of the society. Practices such as Sati, Child marriage, Untouchability etc. Started to gain prominence. With the passage of time and changes in the behaviour and mind-set of the Indian society, these traditions and beliefs soon started to fade away and Hindu laws evolved into the above mentioned statutes.

A Hindu marriage shall be sanctified if the parties are competent to such a marriage in the sense of soundness of mind, relevant age of the parties, sapinda relationship as well as the prohibited

degrees of relationship and bigamy . These restrictions and formalities have been retained which are expedient for the solemnisation of a valid Hindu marriage under this Act. Conversely, the non-compliance of any of these grounds may result in the nullity of marriage in form of voidable or void marriage.

Divorce provisions under the Hindu laws are governed by Hindu Marriage Act, 1955. It comprises of such grounds which can be pleaded by either of the parties. Divorce can be pursued in the form of any mental or physical injury, demanded as cruelty or if any of the spouse is suffering from temporary or permanent form of leprosy, mental disorder or any venereal disease. If any of the parties has either renounced the world or there is no knowledge of such a person being alive or such person has converted into any other religion, then it will constitute to the valid ground for seeking divorce.<sup>13</sup>

Moreover, adultery includes a single act of sexual intercourse by the wife while her marriage subsists and desertion also refers to the willful neglect of a person by his/her spouse. Further, an additional ground has been added to the provisions of divorce which is termed as “irretrievable break down of marriage”. This includes the dissolution of marriage where the couple fails to co-habitor where there is no restitution of conjugal rights. The supplementary was made due to the increase in the number of cases related to such issues.

Adoption under Hinduism is recognized under the Hindu Adoption and Maintenance Act, 1956. Adoption refers to the transplantation of the adopted child from one family in which he is born to another family in which he is adopted. On adoption, ties of the child with his old family are severed and he is taken being born in the new family, acquiring rights, duties and status in the new family.

In earlier times, females were not allowed to inherit the property & also it was nowhere mentioned about the inheritance of females in Hindu Succession Act, 1956 and it was after 2005 amendment that females got the opportunity to inherit the property.

### **III. JUDICIAL VIEW OF UCC**

Courts have constantly helped in development of laws in the form of precedent as well as obiter dicta<sup>4</sup>, where courts suggest its views and opinions regarding various reforms and amendments. In the ruling case of Shah Bano<sup>5</sup>, the apex court expressly talked about the implementation of

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<sup>3</sup> MEGHA JAIN, UCC:A Letter from the Past, LAWLEX.org, (April.15,2022, 2:00PM) [https://lawlex.org/lex-pedia/uniform-civil-code-a-letter-from-the-past/23566#\\_ftn1](https://lawlex.org/lex-pedia/uniform-civil-code-a-letter-from-the-past/23566#_ftn1)

<sup>4</sup> Obiter dicta (dictum- singular) are a Latin phrase meaning “by the way”.

<sup>5</sup> 1985 SCR (3) 844

Article 44 of the Constitution. Rather than saying it a suggestion it should be construed as an urge that the court spoke of Uniform Civil Code. The Supreme Court showed deep regrets and called Article 44 of the Constitution a 'Dead letter'. In the own words of the court' "we understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning." The court clearly wanted the parliament to draft Uniform Civil Code even if the obstacles are around in every step of it, simply to bring utmost justice and true secularism. Yet again in *Sarla*<sup>6</sup> *Mugdal* case, Justice Kuldeep Singh while giving the verdict also opined that Uniform Civil Code has to be retrieved from the sleep it is on since the inception of the Constitution. Looking at the views of courts and judicial system, one thing is understandable that judicial system believe in UCC and also in the nation that it can survive the difficulties that are to be come with UCC.

#### **IV. PAST SCENARIO OF UCC**

When the law commission in its report of 2018 termed Uniform Civil Code as "neither necessary nor desirable at this stage"<sup>5</sup>, it seemed as if the true sense of Uniform Civil Code is lost and it has merely become a provision laying in the Constitution with no utility and relevance. But it was not the case while making of the Constitution. The Constituent Assembly debates in the Constitution making process how's that the makers of the Constitution deeply discussed the relevance, use and concept of Uniform Civil Code. Many supported the idea of Uniform Civil Code while there were some members who were not in favor of the same like Mohammad Ismail who right fully presented every obscurity that could happen if Uniform Civil Code was introduced in India. Nonetheless, being an utmost founder of the Constitution himself as well as the then law minister, Dr. B. R. Ambedkar while supporting the idea of Uniform Civil Code and answering all the arguments of Mahommad Ismail said "Not to read too much into Article 44". He affirmed even if the Uniform Civil Code was implemented it would be applicable to those who would consent to be governed by it.

Again as it was stated by K. M. Munshi, "We want to divorce religion from personal laws from what may be called social relations or from the rights of the parties as regard inheritance or succession. What have these things to do with religion, we really fail to understand."<sup>6</sup> Thus, one thing is certain that the makers of the Constitution while inserting Uniform Civil Code, did not wanted it would over shadow different religions of the people. Rather UCC was and is intended to bring impartiality among the religion.

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<sup>6</sup>1995 SCC (3) 635.

The true intention is not to bring a common law of majority or 'majoritarianism'. UCC would deal with a single body having best practices of all the laws. But what 'best practices' and how to decide which is best amongst all are some of the efforts that the makers left for the future government to deal with.<sup>7</sup>

## **V. PRESENT SCENARIO OF UCC**

Uttarakhand Chief Minister Pushkar Singh Dhama, on Thursday, announced that the government has decided to implement the Uniform Civil Code (UCC) in the state. "The state cabinet unanimously approved that a committee (of experts) will be constituted at the earliest and UCC will be implemented in the state. This will be the first state to do so," Uttarakhand CM Pushkar Singh Dhama said. Legislatively, Uniform Civil Code is merely a provision under the Constitution namely Article 44. But over a period of numerous times, courts and judicial system have talked about Uniform Civil Code. In a ruling case of Seema vs. Ashwani Kumar,<sup>4</sup> the apex court made it mandatory to register marriage irrespective of religion, caste or anything that says otherwise. It was a tiny step but could be a new beginning of Uniform Civil Code. Court have in times tried to implement Uniform Civil Code in tiny steps from cases to cases. As a matter of fact, in the judgment of Shah Bano case, court while directly addressing the issue of Article 44 of the Constitution stated, "Justice to all is a far more satisfactory way of dispensing justice than justice from case to case." In a ruling case of Seema vs. Ashwani Kumar,<sup>8</sup> the apex court made it mandatory to register marriage irrespective of religion, caste or anything that says otherwise. It was a tiny step but could be a new beginning of Uniform Civil Code. Court have in times tried to implement Uniform Civil Code in tiny steps from cases to cases. As a matter of fact, in the judgment of Shah Bano case, court while directly addressing the issue of Article 44 of the Constitution stated, "Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

## **VI. UNIFORM CIVIL CODE & THE CONTROVERSIES**

Before getting into the controversies of the uniform civil code it is necessary to understand what causes these controversies by understanding the meaning of uniform civil code. Uniform Civil code is that part of the law that deals with affairs related to family of an individual and determines uniformity in laws for all citizens, irrespective of his religion, tribe or caste. UCC is inscribed in the article 44 of the Indian constitution that was the article 35 in the draft.

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<sup>7</sup>Mohd. Shakeel, UCC Problem & prospect, Shodhganga, (April, 20 9:44 PM) [https://shodhganga.inflibnet.ac.in/bitstream/10603/52367/7/07\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/52367/7/07_chapter%203.pdf).

<sup>8</sup>Smt seema v. Ashwani Kumar, TP (Civil) 291 of 2005

This lies in the part 4 of the Indian constitution and also deals with directive principles of state policy. And since these are non-judicial rights, they cannot be enforced in the courts. Now coming to the controversies caused due to Uniform Civil Code, In India the main cause for communal conflicts among the common people are the personal laws The Uniform Civil Code is a uniform method or a standardized law which governs citizens as a uniform law. One problem with an absence of having UCC throughout India is that it may go against the basic principles of equality that is one of the fundamental rights of the constitution because by providing personal laws to a certain section of people we are determining the credibility of the secular ethos in the country.

Having a uniform civil code shall make separation of the state from the religion from the state meaningful since personal laws shall cease to exist when a Uniform Civil Code is implemented. Personal laws lead to many communal conflicts that cause harm to the country for example the demolition of various temples and mosques and it indicates that India is still not ready for having a UCC and it also goes against the article 25 of the constitution. People who argue against the Uniform Civil Code for things such as marriage, divorce, inheritance and any such ritual are themselves going against the article 26(b) of the Indian constitution that states that:

“Subject to public order, morality and health, every religious domination or any section there of shall have the rights to manage its own affairs in the matters of religion”.

Since UCC shall be a violation of this article, the judiciary does not take any interest in implementing a UCC because of the provisions enshrined under article 25 and article 26 of the Indian constitution, in fact this issues has already been extensively debated upon in the Supreme court and because of article 25 and 26, it was not quite successful.<sup>9</sup>

## **VII. UNIFORM CIVIL CODE & THE INDIAN CONSTITUTION**

The key problem lies in the fact that, if the constitution makers had intended to implement a UCC in India, they should not have made it part of the State Policy Principles Directive pursuant to Article 44 of the Constitution. The State policy principles set out in Part IV (Art. 36-51) of the Directive, as the name suggests, are merely guidelines to the Government.

They do not need to be strictly pursued and are not enforceable by the Court. These are simply positive obligations for the State that will lead to good governance. The Preamble of the Indian Constitution states that India is secular, democratic, republic.

This means that there is no State religion at all. A secular states hall not discriminate against

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<sup>9</sup>Ar.25 & ar.26, INDIAN CONSTITUTION

anybody on the basis of religion. Religion is concerned only with the relationship between humans and God. It means that religion should not intervene with an individual's life. The secularization process is closely linked to the goal of the Uniform Civil Code as a cause and effect.

In the case of *R.S. Bommai v. Union of India*<sup>9</sup>, according to Jeevan Reddy Justice It was stated that religion is a matter of individual faith and it cannot be mixed up with secular practices and can be regulated by the government by the enactment of a law throughout India, there is a principle of positive secularism as distinct from the theory of secularism adopted by United States as well as the European States, i.e. there is a wall of separation between religion and state.<sup>10</sup>

The Preamble to the Constitution of India has decided to create a "Secular" Democratic Republic. This means that there is no official religion or, in other terms, that the state does not act on any specific religion and does not discriminate on the grounds of religion. Article 25 and 26 of the Constitution of India, as enforceable fundamental rights, ensure freedom of religion and freedom to conduct religious affairs. At the very same time, Article 44, which is not legally binding in a court, states that the State shall seek to maintain a UCC in India.

The problem with having personal laws for all the religion is that having personal laws means having special provisions in the constitution for one section of religion and as much as it will bring resentment, it will also bring enmity in public towards each other and hence it is important that UCC brings such laws that creates a balance between protection of religious principles and fundamental rights of various communities residing in the state.

### **VIII. MERITS & DEMERITS OF UCC**

To findout if implementing a Uniform Civil Code in India is going to be beneficial for the country or not we must first understand the merits and demerits of having a UCC in the country and for that we need to analyse what laws will be affected by implementing a Uniform Civil Code. Implementing a Uniform Civil Code will only affect the personal laws that are based on religion that means the laws dealing with divorce, marriage, adoption, inheritance etc.<sup>10</sup>

Having a Uniform Civil Code throughout India will surely promote the principles of justice because many of the personal laws that are allowed are not justified and they result in unequal treatment of people and hence violating the core principles of the Indian constitution as it was seen in Shah Bano's case of triple talaqas the law of triple talaq was oppressing the Muslim

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<sup>10</sup>*R.S. Bommai v. Union of India*, ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1)



women and was clearly a violation of their fundamental rights while on the other side having a Uniform Civil Code also promotes the model of secularism that India has adopted that is called as positive secularism which is different from the model of secularism in the western countries so having a Uniform Civil Code may violate the religious rights of the people too that have been granted to them by the constitution of India by Article 44 under directive principles of state policy.<sup>11</sup>

## **IX. CONCLUSION**

When religion and personal laws are diverted by Uniform Civil Code, only then India would gain the true sense of secularism. Preamble provides the objectives of the constitution and its makers towards the nation. 'Secular' a word in the preamble is an expression and Article 44 is the essence of it. With a promising manifesto of the central government, it is the right time to bring Uniform Civil Code in India. Article 25 and 26 guarantees freedom of right to religion, freedom of conscience and the right to profess, practice and propagate religion. But this right is subject to the certain provisions in which secular provisions are also contained. Moreover, UCC would not violate Article 25 and 26. UCC shall not and will not interfere in one's religious affairs if that what is feared. With Goa being a perfect example of common family law, there is no need to sense failure of Uniform Civil Code in whole India. However, it is upon the government to maintain the significance of UCC while drafting and executing it. UCC has its first step in India on 1949 but never been able to get existence. Maybe the time was not right then. But the time is right at present with lesser gender gap, modern thinking and justice and equality taking steps ahead of customs and traditions.

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<sup>11</sup>Gauri Kulkarni, Uniform Civil Code, Legal Service India, (April 20, 9:47 PM) <http://www.legalserviceindia.com>