



## **NEED OF UNIFORM CIVIL CODE IN INDIA**

**Vakeel**

Assistant Professor

Department of Law

C.D.L.U., Sirsa.

[vakeelmehra87@gmail.com](mailto:vakeelmehra87@gmail.com)

### **Abstract**

This research paper is about the general discussion of Uniform Civil Code in India. This paper focus on the ideas about Uniform Civil Code that what is the Uniform Civil Code and what is the historical background of the principle as well as current need of the Uniform Civil Code in India. This paper is also a discussion of Democratic Government's view about the Uniform Civil Code. As we further proceed toward the approach of the research paper, is a discussion about the relationship between Uniform Civil Code and secularism. Then it further discussion about the Uniform Civil Code and the Constitutional provisions. This paper also indicate towards the judicial views on the Uniform Civil Code. In the absence of uniform law regarding personal matters like marriage, divorce, adoption, succession, inheritance etc. Various personal laws are applicable to different religious communities. These laws find their sources and authorities in their religious facts and customs which provides for gender discriminatory practices. India as a secular State as per the Constitutional provision & which means that it does not follow any religion for the country. Generally there are two types of secularism positive and negative. India adopted Positive secularism which means that State have no religion of its own, but State shall respect all religions equally or in other words we can say that the citizens of the country can follow the religion of their choice, the State shall not interfere .

**Key Words:-** Uniform civil code, Constitution , Secular, Religion, India.

### **Introduction**

A Uniform Civil Code will be that one law for the whole country which will apply to all citizens in their personal matters such as property, marriage, inheritance, adoption, etc.

According to article 44 of Indian constitution the state has been directed to made a uniform civil code for whole of india irrespective of religion. As per this provision Indian constitution state is duty bound to implement a uniform civil code or a uniform law on the following matters of its citizens like marriage, divorce, successions, adoption etc. Before the Indian constitution came into existence that there was different laws for different communities. At present personal laws of various communities are governed by their religious scriptures like the Hindu laws are based on vedas or smrities, Muslim laws are based on Quran and chrishan laws are based on Bible. As per Indian constitution India is a secular country. As per constitutional provisions India has the positive secularism which means that India has not its own religion but the citizens may follow religion as per their choices. Article- 25 to 28 deals with the fundamental right religious freedom.

Secularism is part of the basic structure of the constitution because ours is a multi-religious country and only secularism can ensure equality, irrespective of religious beliefs<sup>1</sup>.

### **Historical background of Uniform Civil Code**

Before the britishers come into India the Muslim Law for criminal matter was applicable in India. In 1860 the Indian Penal Code made for the uniformity of criminal law throwout of India irrespective of religious law caste etc. Then the procedure for the criminal And civil law was codified by the British govt. at that time like C.P.C. 1908 Evidence 1872 the law of contract 1872 are made out by the British govt. At the same time the British govt. doesd not touch the personal matter of Hindu and Muslims. There was the time of revolution in every society at that time so in U.K. there were changes in personal laws and the concept of uternity in laws that there like equal status of man and women n society. Britishers find out many short comity in personal laws of both Hindu and Muslims like discrimination b/w man and woman was there in inheritance of property in the Hindu law woman has no right to take property and at the same time in Muslims the woman can take half of the man.

The government was forced to create the B N Rau Committee in 1941 to codify Hindu law due to an increase in legislation addressing personal concerns at the end of British rule. Examining the issue of whether common Hindu laws are necessary was the Hindu Law Committee's responsibility.

The origin of the UCC was began from British India when the British government submitted its report in 1835 stressing the need for uniformity in the codification various law relating to crimes, evidence, and contracts, and procedural law like Cr.P.C., C.P.C. were recommended and also recommended that personal laws of Hindus and Muslims be not interfered. Now we can see the interference of British govt. in Hindu and Muslim personal matters like marriage, adoption, succession. In Hindu the first codification was made for given the property right to widows in succession. But

---

<sup>1</sup> The tribune 25<sup>th</sup> Jan, 2023 page – 8.

this right was not absolute because this right gives the property for use only in her lifetime she cannot dispose of the property so acquired, after her death the property was devolve in the coparcenary.

In the Muslim there are a few codification or we can say that still the Muslim laws are un codified or on the basis Quranic law or Shariat law. Some of the codification in Muslim law are as follows Shariat act 1937, dissolution of Muslim marriage act 1939 and Muslim woman (protection of rights on divorce) act 1986.

Uniform civil code for other minorities like Christian, Parsi, Jew, etc. Some of the act are generally applicable on these religions are as under

1. Christian marriage act 1872 (2.) Indian divorce act 1869 (3.) Indian succession act 1925 (4.) Guardianship and wards act 1890. these laws are uniformly applicable to the Christian, Parsi, Jews. So we can say that there are a few matters may be there to need of modifications.

### **Judicial trends on uniform civil code**

The Supreme Court in various judgments has recommended for the implementation of the Uniform Civil code. In *Mohd. Ahmed Khan vs Shah Bano Begum*,<sup>2</sup> in this case Mohd. Ahmed Khan was a famous advocate married with Shah Bano Begum in 1975, Married again with another women because as per the muslim Law the men are eligible four wife's at the same time. Thats why Shah Bano Begum has no option to chose to offer of taking maintenance. In this case supreme court held that the maintenance under section 125 CRPC can be given even after iddat period. After this Judgement there was a hue and cry in whole country among the muslim communities. For the invalidation of this judgment the government at that time passed an act 1986. And in this case the sumprime court recommended for made a uniform civil code.

In case of *Sarla Mudgal v. Union of India*,<sup>3</sup> the question was whether a Hindu husband, married under the Hindu law, by converting Islam can solemnize the second marriage. The Supreme Court in this case it was held that adopting Islam for a second marriage is an abuse of Personal laws. And also said that Hindu marriage can be dissolved under Hindu Marriage Act, 1955 i.e. mere by converting into Islam and married with a Muslim woman does not automatically dissolve the marriage under Hindu Marriage Law and at the same time it will be an offense under Section 494 of the Indian Penal Code.

In case of *Pragati Varghese v. Cyril George Verghese*<sup>4</sup> the christen woman denied to get dissolution of marriage on the ground of cruelty. Because in the christen community the marriage is a sacrament once the marriage solemnized never dissolved. It is discriminative because in India almost every religion have the provisions for dissolution of marriage but in the Christian community there is no provision for divorce.

In case of *Noor Sabha Khatoon v. Mohd. Quasim*<sup>5</sup> the supreme court has held that a divorced muslim woman is entitled to claim maintenance for her children till they become major. The court held that both under muslim personal law and under section 125 of the criminal procedure code, 1973.

In landmark judgment *Danial Latif and anothers v. Union of India*<sup>6</sup> a five judges constitution bench of the supreme court upheld the constitutional validity of the Muslim woman (Protection of rights on divorce) act, 1986 and held that a Muslim divorced woman has right to maintenance even after Iddat period under the 1986 act. The court said that the Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which clearly extends beyond the Iddat period in terms of section 3(1)(a) of the act. Also, a divorced woman who has not remarried and who is not able to maintain her in proportion to the properties which may they inherit on her death according to Muslim law from such divorced woman including her children and parents. If the relatives are found unable to pay her maintenance the Magistrate may direct the State Wakf Board established under the Wakf act to pay such maintenance.

The above decisions of the court would make the job of introducing the Common Civil Code much easier.

In case of *John Vallamattom v. Union of India*<sup>7</sup> the sc held that section 118 of the indian succession act 1925is unconstitutional as it violated article 14 of indian constitution and also recommended for made uniform civil code directed under article 44 of the Indian constitution.

The enactment of the UCC infringes on the right under the Constitution to practice the religion of one's choice, which gives religious communities the ability to adhere to their own regulations.

Smecondly, it is challenging to create a uniform civil code across India because of particular] constitutional provisions in some areas of the North-East that protect indigenouse family law. Moreover, it was never the intention of the frame makers of the constitution to practice total uniformity.

The aforementioned party is said to be trying to turn the secular nation into a one-religion country. So, many fear that a UCC will allegedly impose a Hinduized code on all. A UCC might, for instance, contain clauses that, while conforming to Hindu tradition in matters such as marriage, will legally obligate members of other communities to do the same.

In the *jose Paulo Coutinho vs Maria Luiza Valentina Pereira*<sup>8</sup> case (2019).

### **Constituent Assembly's views on uniform civil code**

---

<sup>2</sup> AIR1985 SC 945

<sup>3</sup> AIR 1995 SC 1531

<sup>4</sup> AIR 1997 BOM 349

<sup>5</sup> AIR 1997 SC 3280

<sup>6</sup> J.T. 2001 (8) SC 218

<sup>7</sup> (2003) 6 SCC 611

<sup>8</sup> Indiankanoon.org

Article 44 contained in part IV of the Constitution says that the state shall endeavour to for the citizens a uniform civil code throughout India While there is no draft or model given in this article. The Constitution maker wanted that it would be a uniform civil code that would change the deferent personal laws of distinct religion, like marriage, divorce, adoption, and inheritance. Part IV of the Constitution the Directive Principles of State Policy given are not enforceable or justiciable in a court of law but are fundamental to the country's governance. Ambedkar in his speech in the Constituent Assembly had said that no one need be apprehensive that if the State has the power, the State will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so.

Member K.M. Munshi however, rejected the notion that a UCC would be against the freedom of religion as the Constitution allowed the government to make laws covering secular activities related to religious practices if they were intended for social reform. He advocated for the UCC, stating benefits such as promoting the unity of the nation and equality for women. He said that if personal laws of inheritance, succession and so on were seen as a part of religion, then many discriminatory practices of the Hindu personal law against women could not be eliminated.

Dr. B.R. Ambedkar had more of an ambivalent stance toward the UCC. He felt that while desirable, the UCC should remain "purely voluntary" in the initial stages. He stated that the Article "merely" proposed that the state shall endeavour to secure a UCC, which means it would not impose it on all citizens. The amendments to protect personal laws from the UCC were eventually rejected.

The clause on UCC generated substantial debate in the Constituent Assembly about whether it should be included as a fundamental right or a directive principle. The matter had to be settled by vote; with a majority of 5:4, wherein the sub-committee on fundamental rights headed by Sardar Vallabhbhai Patel decided that securing a UCC was not within the scope of fundamental rights.

Members of the Assembly took starkly contrasting stances on the UCC. Some also felt that India was too diverse a country for the UCC. Member Naziruddin Ahmad from Bengal argued that certain civil laws in all communities were "inseparably connected with religious beliefs and practices". He felt the UCC would come in the way of Article 19 of the draft Constitution (now Article 25) which guarantees the right to freedom of religion subject to public order, morality, and health. While he was not against the idea of a uniform civil law, he argued that the time for that had not yet come, adding that the process had to be gradual and not without the consent of the concerned communities.

Constitutional law scholar Faizan Mustafa notes that while marriages amongst close relatives are prohibited by the Hindu Marriage Act of 1955, they are considered advantageous in the south India. Even the Hindu Succession Act of 1956 and could not make the daughter a coparcener till 2005. Wives are still not coparceners nor do they have an equal share in inheritance. Similarly, there is still no uniform applicability when it comes to the Muslim personal law or the Shariat Act that was passed in 1937. There are differences between sects of muslim like shia sunni and many other some of the sectx of muslim in India are still governed with customary laws. Some of the Muslems in India are converted so they continuous follows their parent religion laws.

#### **Present scenario on uniform civil code.**

The Law Commission of India to determine how to form a code in the presence of "thousands of personal laws" practices in India. In 2018, the Law Commission submitted a 185-page consultation paper on family law reformation. The paper stated that a unified nation did not necessarily need "uniformity", adding that secularism could not contradict the plurality prevalent in the country. In fact, the term "secularism" had meaning only if it assured the expression of any form of difference, the Commission noted.

While the Supreme Court in 2019 hailed Goa as a "shining example" of an Indian State which has a functioning UCC, experts point out that the ground reality in Goa is more complex and that the Code has legal pluralities. The Goa Civil Code was given by the Portuguese in 1867; it permits a certain form of polygamy for Hindus while the Shariat Act for Muslims has not been extended to Goa with Muslims of the State being governed by Portuguese law as well as Shastric Hindu law. The Code gives certain concessions to Catholics as well. Catholics need not register their marriages and Catholic priests can dissolve marriages performed in church.

Meanwhile, the BJP's 2019 manifesto as well as the Uttarakhand Chief Minister Pushkar Singh Dhami's UCC committee proposal argue that the uniform code would be formed by taking the best practices of various religions and tailoring them for modern times. Researchers say this would essentially mean picking up certain Muslim practices and applying them to the Hindu community (or vice-versa), and question whether there would not be any opposition to the same.

Union Home Minister, Amit Shah announced that a Uniform Civil Code will be put into effect in Himachal Pradesh if the Bharatiya Janata Party (BJP) wins the Assembly elections. The BJP-led state government in Utrkhand has already established a committee to implement a Uniform Civil Code for the state.

The Law Commission is constituted for three years and the 22nd Law Commission was notified on February 24, 2020. The law panel has been lying vacant since the retirement of former Supreme Court judge Justice BS Chauhan in 2018. An Important Issue To Take On this Law Commission. The government has said the issue related to the Uniform Civil Code might be taken up by the 22nd law panel.

While the UCC is a long-time poll promise of the BJP, Union Law Minister Kiren Rijju said in Parliament this year that the government currently had no plans to set up a panel to implement the UCC and requested the 22nd Law Commission of India to undertake an examination of various issues relating to the same. The chairperson and members of said Law Commission, which was set up in 2021, have not yet been appointed.

Gujarat Home Minister Harsh Sanghavi along with Union Minister Parshottam Rupala announced that the State will constitute a committee headed by a retired High Court judge to evaluate all aspects for implementing the UCC.

**Conclusion:**

According to my view for a welfare state the uniform civil code would be work as the safeguard of citizen's rights. Its applications will be progressive legislation and will be very helpful for the well being of the citizens. With change times, the necessity for uniform civil code for all citizens, irrespective of religion, race, caste, etc. ensuring that their fundamental and Constitutional rights should be protected. Even Secularism and National Integrity could be protected by introducing Uniform civil code.

In the end, we could remind the saying of Mahatma Gandhi that *I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another.*

The Supreme Court in various judgments as above disclosed judgment has called that their dire need for framing of uniform civil code for the betterment of citizens of India.

It has been argued by some law mans that while India does have uniformity in most criminal and civil matters like the Criminal Procedure Code, Civil Procedure Code, and the Contract Act, States have made over 100 amendments to the CrPC and IPC, as well as several amendments to civil laws. For instance, BJP-ruled States reduced the fines prescribed and justified by the Centre under the amended Motor Vehicles Act. Another example could be that the law of anticipatory bail differs from one State to another.

Experts thus argue that if there is plurality in already codified civil and criminal laws, how can the concept of 'one nation, one law' be applied to diverse personal laws of various communities? Besides, constitutional law experts argue that perhaps the framers did not intend total uniformity, which is why personal laws were placed in entry 5 of the Concurrent List, with the power to legislate being given to Parliament and State Assemblies.

On passing the verdict of Juvenile Justice (Care and Protection of Children) *Act* seems to be an attempt in moving towards UCC. As it paved the way for the adoption of children by persons from the Muslim communities even though not allowed under their personal laws. The Supreme Court of India again asked the Union Government to form a UCC to remove gender inequality and abolish the retrograde practices followed under the framework of personal laws.

**References:**

<https://currentaffairs.adda247.com/>  
[www.thehindu.com](http://www.thehindu.com)  
[www.jagaranjosh.com](http://www.jagaranjosh.com)  
[www.drishtias.com](http://www.drishtias.com)  
[indiankanoon.org](http://indiankanoon.org)