

UNIFORM CIVIL CODE:

What it is?

In India, each community is governed by its own customs and laws for marriage, divorce, maintenance, adoption, succession and inheritance. Uniform civil code aims to merge them into a single law applicable to all the citizens of India.

Meaning and need of Uniform Civil Code :

The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde..

Indian Constitution about UCC:

The Indian Constitution expressly stands for gender equality. For example, **Article 44** of the Constitution envisages a Uniform Civil Code for all citizens and lays down that, "The State shall endeavor to secure for the citizen a Uniform Civil Code through out the territory of India." However, even after half a century from the framing of the Constitution, the ideal of Uniform Civil Code is yet to be achieved. Women, who make up nearly a half of India, continue to clamour for a gender just code to enjoy equality and justice irrespective of the community to which they belong. The Uniform Civil Code is required not only to ensure (a) uniformity of laws between communities, but also (b) uniformity of laws within communities ensuring equalities between the rights of men and women.

The Chairman of the drafting committee of the Constitution, **Dr. B.R. Ambedkar**, said that, "We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession and it is the intention of those who desire to have **Article 35** as a part of Constitution so as to bring about the change."12 Though Ambedkar was supported by Gopaldaswamy Ayyangar and others but Jawarharlal Nehru intervened in the debate. Nehru said in 1954 in the Parliament, "I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through."13 Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at an honorable compromise by placing it under Article 44 as a directive principle of state policy.

The Preamble of the Indian Constitution resolves to constitute a "Secular" Democratic Republic. This means that there is no State religion and that the state shall not discriminate on the ground of religion. Articles 25 and 26 of the Constitution of India as enforceable fundamental rights guarantee freedom of religion and freedom to manage religious affairs. At the same time as **Article 37 of the**

constitution says that directive principles are non-justiciable. Article 44 which is not enforceable in a Court of Law (as it is a DPSP and not FR) states that the state shall endeavor to secure a uniform civil code in India.

Articles 25-30 talk about protection of religious freedom and education and culture rights of minorities. Gives religious groups derive the right to be governed by 'personal laws'.

How will a UCC deal with this basic constitutional contradiction? Is then the formulation of a UCC not unconstitutional? Will it not overstep fundamental rights?

Uniform Civil Code - Gender Justice : Supreme Court

In *Mohammad Ahmed Khan v. Shah Bano Begum*, popularly known as **Shah Bano's case**, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Though this decision was highly criticized by Muslim Fundamentalists, yet it was considered as a liberal interpretation of law as required by gender justice. Later on, under pressure from Muslim Fundamentalists, the central Government passed the Muslim Women's (Protection of rights on Divorce) Act 1986, which denied right of maintenance to Muslim women under section 125 Cr.P.C. The activist rightly denounced that it "was doubtless a retrograde step. That also showed how women's rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women's rights."

In 1985 in the case of *Mohammad Ahmed Khan v. Shah Bano Begum*. In this case a Muslim woman claimed maintenance from her husband under Section 125 of the Code of Criminal Procedure after her husband pronounced triple Talaq (divorce by announcing the word "Talaq" thrice). The Apex Court held that the Muslim woman had a right to get maintenance under Section 125 of the Code and also held that Article 44 of the Constitution had remained a dead letter. Under the pressure from Muslim Fundamentalists, to undo the above decision, the Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim Woman for maintenance under Section 125 of the Court was enacted by the Indian Parliament

International Obligation for UCC:

Under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly India having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce and inheritance. So as a step towards a gender just code, the personal laws of various communities in India need a closer look and reform, not only in compliance with the Indian Constitution but also as per the provisions of the International law.

Transformation of Hindu Laws is the first step to UCC:

There is a misconception among people is that only Muslims and Christians follow their customary or religiously ordained laws. There are countless examples to establish that customary practices have not vanished among Hindus, despite countless reforms introduced since the 1950s codification of laws.

Hindus by and large continue following customary practices prevalent among their respective castes, sects and communities even though laws enacted by the state for the Hindu community have been totally secularised. For instance, most Hindu groups avoid intra-gotra marriage because they consider people belonging to the same gotra as sharing a brother-sister bond. Therefore, sagotra marriage is treated as bad as incest even though there is no bar on sagotra marriages in the Hindu Marriage Act.

What the constitution framers thought about this issue is not clear as personal laws are also state subjects and the states can also make laws for the same. The first departure from enacting the UCC was the laws for Hindus enacted in 1955-56.

It is important to understand why this was done. The Hindu laws were extremely gender unjust compared to laws of other communities and needed immediate reforms. Daughters had no right to inherit property, the right of widows was a limited life estate. Women had no right to divorce and there was no restraint upon men regarding polygamy.

Child marriage, abandonment of widows etc. were problems faced by women. The urgency was to reform Hindu laws. However, though this was the stated objective, there was a political motive to acquire the legislative power over Hindus which until then was in the hands of religious heads of different sects. The aim was also to bring all reform religions such as Buddhism, Sikhism and Jainism, etc. within the broad Hindu fold. Finally, the laws enacted were not even gender-just because a common consensus had to be reached by diluting women's rights.

Codification is bigger challenge for getting consensus :

The biggest and the most prominent obstacle in implementing the UCC, apart from obtaining a consensus, is the drafting. There is a lot of literature churned out on UCC but there is no model law drafted. General view of the people is that under the guise of UCC, the Hindu law will be imposed on all. And by far the possibility of UCC being only a repackaged Hindu law was ruled out by Mr. Atal Bihari Vajpayee(Prime Minister at that time) when he said that there will be a new code based on gender equality and comprising the best elements in all the personal laws. The UCC should carve a balance between protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious or political considerations

Arguments in favor of Uniform Civil Code:

UCC will promote justice, equality and national integration. The enactment of UCC will promote Gender equality and welfare of women. It can be argued that Personal Law system violates the principle of equality of the Constitution. UCC can promote equality and justice by incorporating similar laws for all citizens.

Another advantage of UCC is that it will simplify the cumbersome legal matters governed by personal laws and will promote gender justice by removing the inbuilt gender injustice of personal laws. In the absence of UCC judges interpret various provisions like maintenance in case of Muslim women according to their prejudices and opinion. The introduction of UCC will prevent such interference and promote Uniform provisions for the welfare of all women.

The paramount objective of unity and integrity of India as resolved by the People of India in the preamble could be achieved only when Article 44 is transformed into enforceable Uniform Civil Code. In India, secular laws like Special Marriage Act 1954, already exists. This law governs members of all the religions whether Hindu, Muslim, Parsi, Christian, etc. it is acceptable among all the citizens of India. This shows that there is no reason that why a uniform secular law cannot be extended and enacted for whole India.

It has been rightly pointed that UCC will not violate Article 25 and 26 and it will help in attaining secularism and Article 44. Further, it can be argued that marriage, succession etc. are secular matters and law can regulate them. Article 25 of the Constitution of India gives power to state to interfere in matters of religion. So, the state can enact provisions for welfare of religious entities and we can argue that UCC is welfare legislation because it will remove the inherent injustice and loopholes of Personal Law System.

The introduction of UCC will promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women. It will also remove prejudices against women regarding personal laws on divorce and maintenance.

In India, laws governing Hindu women are progressive and less discriminatory as compared to laws governing Muslim women. There is no reason that why one portion of women should be excluded from the benefits of such rights. The introduction of UCC will ensure uniform rights for the women all over India.

Arguments against Uniform Civil Code:

It is argued that drafting a UCC will not prove good for India because India has a more diverse culture with people of so many religions living and professing their religion and so India should not blindly copy the west positivism centered legal trajectory.

The continuing personal law system can handle the potential inequality through the intricate process of gradual harmonization of Indian personal law.

It is largely looked upon by Muslims as a threat to their identity because the code in itself seems to be favoring the majority population of Hindus. It looks like a Uniform Hindu Code rather than a uniform code that will be secular in nature. But this problem can be resolved by taking into the consideration the problems of the minority group like insecurity, complete loss of identity and marginalization within Indian society.

WAY FORWARD/Innovative solution:

India's secular courts should stop adjudicating disputes on the basis of personal laws of any community be it Hindu, Muslim, Christian or Parsi.

Instead, the state should confine itself to adjudicating cases only under the existing secular laws such as the Indian Marriage Act, Indian Divorce Act, Indian Succession Act, Indian Wards & Guardianship Act. These should be applicable to all citizens that choose to approach secular courts, irrespective of caste, creed, or religion. But these laws need to be carefully reviewed and improved in order to make them egalitarian and gender just.

Those who wish to continue with religio-customary practices of their community should be free to do so provided they don't expect India's secular law courts to be saddled with the burden of adjudication and enforcement. Let the onus of ensuring compliance with customary laws rest with consensually accepted authority figures of that community be it the local imam or granthi, the family priest, caste panchayat or the spiritual gurus of the concerned sects.

However, if even one party to the family dispute feels dissatisfied with the verdict of the authority adjudicating customary law, heshe should have the right to approach the secular courts where the dispute should be adjudicated only within the framework of secular laws applicable to all.

For example, the current law against bigamous marriages among Hindus works bigamous marriages among Hindus works in favour of only those Hindu women who choose to sue their husbands in a court of law. A Muslim woman who accepts the second or third marriage of her husband or doesn't legally lodge a complaint after being arbitrarily abandoned is not going to benefit even if the arbitrary triple talaq is declared illegal. This is true not just for India but also for countries that give no legal recognition to Muslim or Hindu Personal Law as India do

There is now concrete evidence that when better options are available neither Muslim nor any other group of women hesitate from availing of them. Today a growing number of Muslim women are filing cases under Dowry Prohibition Act as well as the laws against domestic violence, even though these laws don't draw legitimacy from the Holy Quran or the Shariat.

Neither the All India Muslim Personal Law Board nor any mullah or maulvi has dared openly prohibit Muslim women from doing so. This is because these laws don't have the word "Hindu" attached to them.

Though these community neutral laws have several flaws, they have had the salutary effect of bringing Hindu, Muslim, Christian, Sikh, Buddhist, tribal and non-tribal women on a common platform to fight for what are common problems for women of all communities. Therefore, if we are serious about a UCC, let us do away with laws with a communal tag and let the two systems compete with each other on the basis of voluntary compliance.

CONCLUSION:

one can say that in our country, personal laws continuously affect the lives and rights of a large number of women of all most all the communities. Although various efforts are being done by

the means of international instruments, reforms of national laws, changing judicial trends, recommendations of Law Commissions and other social elite groups to ensure gender equality but still women in our country are not treated equally and discriminated in the field of family law especially in cases of marriage, divorce, maintenance, inheritance etc. In these situations, a gender-just code is the need of the time. So a Uniform Civil Code is very important for the protection of oppressed women, to protect their human rights, to remove discrimination against them irrespective of their religion or community they belong and, lastly to make our national laws in accordance with the international instruments which are legally binding on India through various international conventions and international Human Rights instruments which are ratified by India. I think at the present time, the time is ripe for us to try to push it (Uniform Civil Code) through. To sum up in last, it can be said for citizens belonging to different religions and denominations, it is imperative that for promotion of national unity and solidarity a unified code is an absolute necessity on which there can be no compromise. Different streams of religion have to merge to a common destination and some unified principles must emerge in the true spirit of Secularism. India needs a unified code of family laws under an umbrella of all its constituent religions. Whether it is the endeavor of the State, the mandate of the court or the Will of the people is an issue which only time will decide.

Recent Developments:

[may2016] Triple talaq: Marriage of Muslim woman during 'iddat' not void, says Delhi court

As the issue of triple talaq is being debated in the Supreme Court, a city court has ruled that the marriage performed by a Muslim woman during the iddat (waiting) period is not void.

In Islamic law, a divorced woman has to wait for about three months referred to as *iddat* before she can remarry.

[oct 2016] Uniform Civil Code Not Acceptable, Reiterates Muslim Law Board

The All India Muslim Personal Law Board (AIMPLB) today reiterated its opposition to the Uniform Civil Code, with general secretary Maulana Wali Rahmani saying it is not acceptable to the Muslims at any cost.

[july 2016] Centre Asks Law Commission To Examine Uniform Civil Code Issue

Indicating need for wider consultation before taking a call on a uniform civil code, the government has asked the Law Commission to examine the issue.

[dec 2015] Up To Parliament To Decide On Uniform Civil Code, Says Supreme Court

The Supreme Court has refused to entertain a petition by a Delhi BJP leader seeking a direction to the Centre and Parliament to enact a uniform civil code to put an end to alleged discrimination being faced by Muslim women.

[feb 2014] When it comes to adoption, religion no bar: Supreme Court

The Supreme Court, in a landmark judgement that is certain to resurrect the debate on the adoption of the uniform civil code, has ruled that the Muslim personal law will not come in the way of a community-member's right to adopt a child.