
HARMONIZING DIVERSITY: EXPLORING THE PROSPECTS OF ENACTING A UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

In this essay, the author discusses the concept of the Uniform Civil Code (UCC) in India, which aims to establish a single law that governs personal issues such as marriage, divorce, custody, inheritance, and succession, and replaces the diverse personal laws of different religions. The author argues that the UCC is necessary for achieving the objective of a uniform civil code throughout the territory of India, as envisaged in Article 44 of the Directive Principles of State Policy. The essay addresses concerns raised about the UCC being in conflict with the freedom of religion guaranteed under Article 25 of the Constitution, by stating that there is a clear difference between religious faith and belief and religious practices, and that the UCC aims to create uniform laws on matters of personal law rather than a uniform method of practicing religion. The essay cites several judicial pronouncements by the Supreme Court of India, which have emphasized the need for enacting the UCC. It also refutes the argument that the UCC will result in the imposition of religious practices of the majority on the minority. The author concludes that the UCC is an essential step towards achieving social equality and national integration, and the government needs to take necessary steps towards enacting it.

“So long as our laws are religion oriented, we can hardly build up a homogeneous nation”¹ – K.S. Hegde

The term "Uniform" in Uniform Civil Code ("UCC" in short) refers to the equal application of Personal Laws throughout different religions; the term "Civil" in the UCC refers to the application of Personal Laws relating to marriage, divorce, custody, guardianship, adoption, maintenance, succession and inheritance; and the term "Code" refers to the codification of different personal laws into a single Act or a collection of Acts, similar to the Indian Penal Code or the Civil Procedure Code. By enacting UCC, the parliament would establish uniform laws across all religions with regard to issues such as marriage, inheritance, adoption, divorce etc., thus replacing the personal laws of each religion and combining them into a single unified law, having pan India application.

Uniform Civil Code ought to be enacted in view of Article No. 44 under the Directive Principles of State Policy (DPSP), which reads, “*The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India*”. Being a part of DPSP, Article 44 is not enforceable in any court.²

There are numerous concerns against the enactment of a Uniform Civil Code throughout the Country across religions. Considering that different religions have diverse rituals and customs, enacting a unified law would cause complications. Furthermore, one more concern is that the proposed legislation is in conflict with the freedom of religion guaranteed under Article 25³.

A clear difference ought to be drawn between religious faith and belief; and religious practices. The State protects religious faith and belief, so if religious practices are shown to be in violation of public order, morals, or health or the policy of Social welfare which the state has embarked upon. The State has the authority under Article 25(1), to control or prohibit such activities⁴. Since Uniform Civil Code is enshrined under the Directive Principles of State Policy and the objective of the Directive Principles is to embody the concept of Welfare State⁵, the enactment of UCC cannot be held to be in violation of Article 25⁶, but rather would enjoy protection under

¹ Hegde, Kowdoor Sadananda (1972). Islamic Law in Modern India. India

² India Const. art. 44

³ India Const. art. 25

⁴ State of Bombay v. Narasu Appa Mali, AIR 1952 BOM 84

⁵ Kesavananda Bharati v State of Kerala, AIR 1973 SC 1461

⁶ India Const. art. 25

Article 25(1)⁷. In support of Article 44⁸ it has also been held that “*The power of Parliament to reform and rationalize the personal laws is unquestioned. The command of Article 44 is yet to be realized.*”⁹

Furthermore, the goal of the UCC is to create uniform laws on matters relating to marriage, divorce, custody, guardianship, adoption, maintenance, succession and inheritance of property, rather than to establish a uniform method of practising religion, the legislation does not conflict with the right to freedom of religion guaranteed by Article 25 of the Constitution. So the claim that UCC will be in conflict with Article 25 is wholly misconceived.¹⁰

There is a common and allied misconception that the enactment of the UCC will result in the imposition of the religious practices of the majority on all citizens of the country. The aforementioned legislation will establish uniform laws concerned with marriage, divorce, custody, guardianship, adoption, maintenance, succession and inheritance, as well as provide laws common to all, in those areas, rather than establishing a uniform means of practising/professing/performing religion. The idea behind the enactment of UCC is uniformity of laws in the areas mentioned above and not homogeneity of religious practices, hence the idea that the UCC imposes religious practices of the majority on the minority is unfounded and misleading.

The Supreme Court through various judicial pronouncements has stressed for the enactment of a Uniform Civil Code in the Country, some notable cases are mentioned herewith –

1. Mohd. Ahmed Khan v. Shah Bano Begum

Y. V. Chandrachud, CJ, observed that Article 44 remained to be a “dead letter” and that a common civil code would help in national integration. It was further said that it is the duty of the State to enact the Code and that it has the legislative competence to do the same.¹¹

2. Jorden Diengdeh v. S.S. Chopra

The Court in this case referred to the observations of Y. V. Chandrachud, CJ on UCC in the

⁷ India Const. art. 25 § 2

⁸ India Const. art. 44

⁹ S.R. Bommai v. Union of India, (1994) 3 SCC 1

¹⁰ India Const. art. 25

¹¹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

Shah Bano Case¹². The Court observed that the laws relating to judicial separation, divorce and nullity of marriage were far from uniform and suggested that a uniform law be made which would apply to all people irrespective of their religion or caste. The Court further went on to suggest a legislative intervention to provide for UCC and also suggested the same to the Ministry of Law and Justice.¹³

3. Sarla Mudgal v. Union of India

The Court referred to the observations on UCC made in the cases of Shah Bano¹⁴ and Jordan Diengdeh¹⁵ and noted that the foundation of Article 44 is the idea that, in a civilized society, there need not be a link between personal law and religion. While Article 25 upholds religious freedom, Article 44 aims to remove religion from social relations and personal laws. Therefore, it was held that marriage, inheritance, and similar secular issues are *excluded from the protection provided by Articles 25, 26, and 27*.¹⁶

The Court further went on to request the Government through the Prime Minister to Consider the enactment of UCC through Article 44 and further directed the Ministry of Law and Justice to file an affidavit indicating the steps taken and the efforts made by the Government towards securing a Uniform Civil Code.¹⁷

4. John Vallamattom v. Union of India

The Court in the instant case had similar reasoning as was given in the case of Sarla Mudgil¹⁸ with respect to there being no link between Personal Law and religion in Article 44 and matters in consideration of the said Article not being covered under Articles 25 and 26.¹⁹

Mentioned above are a few notable cases among numerous other cases where a need for UCC has been stressed by the Apex Court.

¹² Ibid

¹³ Jordan Diengdeh v. S.S. Chopra, (1985) 3 SCC 62

¹⁴ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

¹⁵ Jordan Diengdeh v. S.S. Chopra, (1985) 3 SCC 62

¹⁶ Sarla Mudgal v. Union of India, (1995) 3 SCC 635

¹⁷ Ibid

¹⁸ Ibid

¹⁹ John Vallamattom v. Union of India, (2003) 6 SCC 611

Article 51A which is contained in Part IVA of the Constitution of India provides for the fundamental duties of the Citizens of India, clause (e) of the aforementioned Article provides for the duty of a citizen to-

*“promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women”*²⁰

A plain application of the principles laid down in the fundamental duties would only make a change in the heart of the Applicant and would not change the attitude of the citizens at large. The goal of the fundamental duty enshrined in Article 51A(e)²¹ is very similar to that of a UCC which can only be realized with a successful implementation of UCC throughout the country.

India is a signatory of Article 16 of the Universal Declaration of Human Rights, 1948 reads as under:

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.²²

The abovementioned Declaration to which India is a signatory seems to suggest common and indiscriminatory laws with respect to aspects of marriage and its dissolution. Since India is a signatory to the declaration it is bound to give effect to it. It is even a constitutional mandate under Article 51(e)²³. On a plain reading, the object of the declaration seems to be in consonance with the principles of a UCC.

The Uniform Civil Code ensures gender equality, upholds the rights of individuals, simplifies the law, promotes equality with respect to religion and gender and also helps in national

²⁰ India Const. art. 51A cl. e

²¹ Ibid

²² Government of India Law Commission of India Consultation Paper on Reform Of Family Law, 14 (2018), <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>.

²³ India Const. art. 51A cl. e

integration. The UCC is like the system of uniforms in schools, a uniform helps to maintain homogeneity and equality, and a uniform ensures that a student is not given special treatment or discriminated against based on his/her appearance. In the context of India, 'appearance' is religions, genders, tribes, races and castes 'special treatment' refers to personal laws which give certain religions, genders, tribes and castes more rights and put them in a position of power over the other person in a relationship governed by such laws. UCC helps to protect the rights of the people by regulating and restricting the religious practices which go against fundamental rights and are in violation of public order, morals, or health.²⁴

The proposed legislation contributes to the promotion of gender equality by ensuring that laws are equal for both men and women and that there are no gender biases. The legislation will govern issues such as succession, marriage, inheritance, adoption, divorce, guardianship, maintenance etc. The personal laws in these matters are oppressive to women and put men in a power position over women.

The amalgamation of various personal laws over diverse religions and making a single code/law common to all citizens of the country will help to simplify the law. It will also reduce the difficulty of implementing and comprehending various personal laws, as well as the burden placed on the courts by these laws.

As was noted by the abovementioned judicial pronouncements, the implementation of a single law for everybody, the proposed legislation integrates the nation into a single unit with everybody following uniform laws without discrimination. It promotes the constitutional mandate that the leaders of the constituent assembly aimed to achieve while framing the constitution. It promotes the motto of "one nation one personal law" binding the nation together under the umbrella of a single personal law that governs everybody.

The very fact that Article 44²⁵ enjoins bringing into force Uniform Civil Code, speaks volumes about bringing UCC into force. Furthermore, Article 44²⁶ coupled with numerous judicial pronouncements, article 51(e)²⁷ and Article 16 of the Universal Declaration of Human Rights,

²⁴ This argument was inspired by the points raised by Dr. Vikas Divyakirti in his lecture on "Uniform Civil Code: Meaning, History & Hindu Code Bill (Concept Talk) by Dr. Vikas Divyakirti" on YouTube, https://www.youtube.com/watch?v=xiVAIcDVYew&t=1s&ab_channel=DrishtiIAS

²⁵ India Const. art. 44

²⁶ Ibid

²⁷ India Const. art. 51A cl. e

1948²⁸ provides a strong responsibility upon the government for the enactment of a Uniform Civil code in the country.

Not bringing in UCC creates discrimination, a hostile environment against women and weaker sections of society, maintains the status quo, without any improvement, and belittles the pious hope expressed by makers of the Constitution, for no rhyme or reason. If it has to be brought into force, the sooner the better, more so when nothing has happened in this regard since independence.

²⁸ Government of India Law Commission of India Consultation Paper on Reform Of Family Law, 14 (2018), <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>.