



## UNIFORM CIVIL CODE: AN OVERLOOKED CONSTITUTIONAL NECESSITY

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### ABSTRACT

#### Uniform Civil Code: An Overlooked Constitutional Necessity

India has developed immensely over 72 years in all spheres, the norms of the society have changed, the population has become educated and understands the importance of academics in life, and great heights have been achieved in various scientific and economic fields as well. As time goes on, the society develops, and alterations have to be made in accordance with the changing mind-sets of the citizens. Many laws in India have also undergone such changes and then emerged and accepted by all the citizens and Article 44 was one such provision in the Constitution, which the makers intended to put in force, when the country was prepared for it. However, the same has not been done as of now.

The Constitution of India is our Supreme Law. This document has been demarcated into several parts by our constitution makers. Various procedures, structure of the government bodies, as well as Directive Principles of State Policy are also enlisted in the same. The topic in question, Uniform Civil Code, is a part of the DPSPs as mentioned in Article 44 of The Constitution of India.

<sup>1</sup> The Constitution of India

Personal laws, are laws that apply to a certain group of people based on their religion, caste, faith, and belief. These laws can often be discriminatory towards the vulnerable sections of the society including women and minorities. The Code aims to remove these disparities and set everyone on equal footing, and also unify the citizens since the complex laws will be simplified. Through this the same civil law will be applicable to all the citizens irrespective of their faith, and after innumerable incidents it is visible that UCC is the urgent need of the country.

### INTRODUCTION

The Constitution is our principal law which was established as a structure to govern India. It is an indispensable part of our lives and also gives us our Fundamental Rights which are mentioned in Part III of The Constitution. Fundamental Duties are an integral part of every citizen's life and go hand in hand with Fundamental Rights. The Constitution defines the structure of all government bodies, and also enumerates their establishment process and functioning among various other important provisions.

**Article 44** states that, The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.<sup>1</sup> This paper mainly deals with this article and the provisions that are entailed in it, i.e. Uniform Civil Code. Article 44 is a part of the Directive Principles of State Policy laid down in our Constitution. The Directive Principles of State Policy of India (DPSP) are the guidelines given to the federal institutes governing the State of India, to be kept in citation while framing laws and policies. As



defined in **Article 37**, these provisions shall not be enforceable, **but** the principles laid therein are nevertheless **fundamental** in the governance of the country, and it shall be the **duty** of the state to apply these principles in making laws.

The provision of Uniform Civil Code (UCC) was mentioned along with DPSPs because it was an extremely advanced law according to the situation in which India stood at that time, and the makers believed that this law will be implemented when the State feels that the citizens of the country are ready to accept it. India, as a country, has developed immensely in all spheres and is continuing to grow even today. The literacy rate has grown from 18.33 percent in 1951, to 74.04 percent in 2011.<sup>2</sup> Societies have evolved in many ways and so have the citizens. The people now adapt to advanced norms and laws easily and are much more capable of understanding the importance of changing needs. 72 years have passed since India became independent and even now, there is a lot of ongoing debate about whether UCC should come into practice.

**Article 14** states that, The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Although this is an imperative law, the civil law prevalent in the country as of now, is a living example of inequality among the citizens of the country. Without the implementation of Uniform Civil Code, this inequality cannot be abolished.

#### PERSONAL LAWS

These are laws that apply to a certain class or group of people or a particular person based on religions, faith, and culture. These laws vary from community to community and thus, cause inequality among the citizens of the country.

A part of our The Preamble states that –  
**to secure to all its citizens**  
**JUSTICE, social, economic and political;**  
**LIBERTY of thought, expression, belief, faith and worship;**  
**EQUALITY of status and of opportunity;**  
**and to promote among them all**  
**FRATERNITY**  
**assuring the dignity of the individual and the unity and integrity of the Nation;**<sup>3</sup>

The preamble itself states that all the citizens should be secured with Equality of status and opportunity; however we are existing witnesses of the fact that this rule is contradicted every day in our society.

The **Hindus** in India are governed by **The Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Indian Succession Act, 1925, Guardianship and Adoption Act, 1956.**

The **Muslims** are governed by **Muslim Law (Shariat), 1937** the source for which is the holy book **Quran**, and **The Muslim Marriage Act, 1939.**

The Muslim community is further divided into Shia Muslims and Sunni Muslims and their laws vary in every aspect creating inequality within the community.

The **Christians** are governed by **Christian Personal Law and Indian Succession Act, 1925.**

<sup>2</sup> 2011 census rate

<sup>3</sup> The Preamble of The Constitution of India



These laws are applicable to all Catholics except Goan Catholics.

The Parsis are governed by **Parsi Marriage and Divorce Act, 1925** and **Indian Succession Act, 1925**.

These differing civil laws make people feel different from one another and develops in them the feeling that one culture is either superior/inferior to another culture.

### GENDER INEQUALITIES IN PERSONAL LAWS

Personal laws were framed in regulation with the holy books of all cultures. These books prescribed norms and laws according to the situations prevalent at that time; However, the laws in question are not suitable in present times considering the changing and evolving conditions of the State.

A personal law not only discriminates between different cultures, but also gives an unequal status to people of their own culture due to gender difference. Thus, these laws cause more harm within a culture than it does among different cultures. Although these laws are applicable to an entire community, the women have been subjected to inequality since ages through these laws in the name of 'preservation of culture'.

Few instances of gender inequality that occurs due to personal law are mentioned hereinafter:

- Rules for inheritance of a woman's property in Hindu Law are different from that of a

man's property. In case a woman dies intestate, her property descends to her husband's heirs and only if they are not alive will the property be inherited by the father's heirs and then the property will be shifted to her mother's heirs.<sup>4</sup> However, if a man dies intestate his property is not inherited by his wife's heirs.

- Both Shia Muslim and Sunni Muslim women get half the property share of what a man gets. If the son gets 2 part of the property, then the daughter would only get 1 part of the property.
- The Christian widows get only 1/3<sup>rd</sup> share in the property of the husband while other lien descendants get 2/3<sup>rd</sup> share in his property.<sup>5</sup>
- A Non-Parsi woman who is either a wife or widow of a Parsi cannot inherit, but the children of the couple can inherit from the father.<sup>6</sup>
- The child of a Parsi woman, born to her from a Non-Parsi man is not considered Parsi.<sup>7</sup> Whereas, the same is not the rule for Parsi men.
- In Hindu law, a married woman can only adopt with the consent of the husband, even if she is separated from her husband.<sup>8</sup>
- Even the minimum legal of marriage for girls is 18 years. Whereas, for the boys the legal age is 21 years. This difference itself shows a complete bias.

<sup>4</sup> Hindu Succession Act, 1956

<sup>5</sup> Indian Succession Act, 1925

<sup>6</sup> Indian Succession Act, 1925

<sup>7</sup> Indian Succession Act, 1925

<sup>8</sup> Personal Laws (Amendment) Act, 2010



- Muslim Women Protection of Rights on Divorce Act, 1986 has now been progressively interpreted by the Hon'ble Supreme Court in the Danial Latifi Case<sup>9</sup> to include maintenance for divorced Muslim women also. However, extremely trivial sums are provided which very difficult to receive.

### THE NEED OF UNIFORM CIVIL CODE

Uniform Civil Code is a set of laws to govern personal matters of all the citizens of the country, irrespective of their religion ensuring that their fundamental as well as constitutional rights are protected. We have evolved as better citizens in the past few years than we ever were; we understand how to treat people with equality and empathy but, these cultural laws somehow pushes us back into older times by creating a barrier between the citizens just on the basis of culture.

Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, Succession and like matters are secular by nature and, therefore laws can regulate them.<sup>10</sup>

A widespread debate has been going on since a very long time on the fact that, **Article 25(1)** which says that, Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

However, the same article also has another clause **Article 25(2)** which states that,

Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Even though it is absolutely explicit that the code would not hamper the secularity of the country, this provision makes it clear that Article 25 cannot stop any law that would be made by the government for the welfare of society.

Religions cannot control the working of the legislative so much that laws, which would benefit the society as a whole cannot be made. There should be a regulation on everything so that one factor does not overpower the governance as a whole.

Justice R.M Sahai stated in **Mohd. Ahmad Khan v. Shah Bano Begum**,<sup>11</sup> "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social construct. But, religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression. Therefore, a unified code is imperative, both for protection of the oppressed and for promotion of national unity and solidarity."

<sup>9</sup> Danial Latifi & Anr. V Union of India

<sup>10</sup> Uniform Civil Code – The indispensability and Absurdity

<sup>11</sup> 1985 AIR 9456 1975 AIR 83



Even if the reforms and amendments made in personal laws are considered, like the 2005 Amendment of Hindu Succession Act, 1956 or The Muslim Women Protection of Rights on Divorce Act, 1986, they are extremely inconsistent and cannot be relied upon for delivery of justice and equality.

The implementation of Uniform Civil Code would help in accelerating national integration among the citizens as they would have a feeling of one-ness among themselves. The people would not have any insecurity about their rights or about the laws through which they are governed.

The burden on the judiciary would lessen as various problems and shortcomings of the personal law would be removed by the code. Communal division, which has been a problem since time immemorial, would finally be replaced with respect for one another's religion which would also make India a much secure and unassailable country.

The demand for Uniform Civil Code was first raised by women institutions to get equal rights, but now it has become the need of every individual so that unnecessary chaos which arises due to inequality among and within cultures can be removed from the roots.

According to the Hindu Minority and Guardianship Act, "The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property are—in the case of a boy or an unmarried girl—the father, and after him, the mother."<sup>12</sup>

<sup>12</sup> Section 6, Hindu Minority and Guardianship Act, 1956

<sup>13</sup> (1909) 36 Cal 185.

As per this provision a mother is not the natural guardian of her child begotten from a legitimate marriage, but she can very well be the natural guardian of an illegitimate child and in that case the father can move away from all responsibilities. This epitome of inequality was acknowledged by the Hon'ble Supreme Court.

The only state in India to have a Uniform Civil Code is Goa. All the Goans are governed by one civil law, i.e. **The Portuguese Civil Code, 1867**. However, there is one clause that has instilled inequality in this code as well which says that, Hindu men are allowed bigamy if the wife fails to deliver a child by the age of 25, or a male child by the age of 30. This clause shows discrimination not only towards the wife, but also towards the girl child.

In Muslims, Talaq (divorce) can be pronounced even in the absence of wife, and the talaq should be deemed to have come into effect on the date on which the wife came to know of it. This was laid in the case of **Fulchand v. Navab Ali Choudhry**.<sup>13</sup>

A divorce given to a Muslim wife under mistaken belief, under compulsion or jest or inadvertently or by mere slip of tongue is also a valid divorce as laid down in the case of **Saiyed Rashid Ahmed v. Mst. Anisa Khattun**.<sup>14</sup>

It is not even necessary for the wife to understand the term of Talaq.<sup>15</sup> Both these rules simply state that a woman has no control over her marriage, and that she can be divorced even if the husband does not have

<sup>14</sup> AIR 1932 P.C 25.

<sup>15</sup> Mohammedan Law – Aqil Ahmad



the intention to divorce her. These rules are applicable only to Muslim men, not to the women.

In Sunni Law, while signing a Talaqnama, the presence of the wife is not necessary as long as the man has intention to divorce her; this was held in the case of *In Re Raja Saheb*.<sup>16</sup>

A Sunni Muslim male is free to marry a Non-Muslim Kitabia female. However, such practice is obviously condemned for Sunni Muslim females. The concept of equality was never present within these laws, and even after years of development, there is no significant progress in the position of women. In Shia law, neither a male nor a female can marry a Non-Muslim, which shows equality of genders but also depicts intolerance towards other cultures and instills hatred and detestation towards particular religions which ruins cultural harmony and integrity.

Female heirs to a male Hindu intestate's property cannot ask for a partition of the intestate's dwelling house in which the intestate's family lives until the male heirs choose to divide their respective shares. A female heir who is a daughter has the right of residence in the dwelling house only if she is single, has been deserted by or is separated from her husband, or is a widow. A widowed daughter loses her right to residence upon remarriage.<sup>17</sup>

An illegitimate child in Sunni law has his maternity in the woman who gave birth and he/she inherits only from the mother<sup>18</sup>, unless

the father acknowledges the child's paternity which is a very unlikely situation, especially in case the child was born out of adultery or zina. Hence, the father is rid of all the responsibility and the burden comes on the mother irrespective of the fact that she may not be capable of earning for the child's survival.

In Shia law, an illegitimate child neither has maternity nor paternity, and thus, the child can inherit from no one. The child is completely excluded and has no support to live on. This shows inequality between children, even though they are nowhere at fault. The lives of these children are affected immensely and they are never treated equally in the society.

A widow, in Hindu law, has the right to inherit property from her husband's estate, but her husband can transfer the property to a third person through a will and she cannot oppose him. This was held in **Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and Ors.**<sup>19</sup>

For Guardianship in marriage in Shia law, only father and father's father are recognized, the mother is not even considered as an option for Jabar. The mother is also not entitled to be the legal guardian of the property of her minor child.<sup>20</sup>

A very important difference between cultures which makes the implementation of UCC imperative is that there is no provision for adoption in Mohammedan law.<sup>21</sup> There are many couples in our society who require the

<sup>16</sup> 44 Bom. 44

<sup>17</sup> Hindu Succession Act, 1956

<sup>18</sup> Mohammedan Law – Aqil Ahmad

<sup>19</sup> 2008 (4) S.C.C. 649.

<sup>20</sup> Mohammedan Law – Aqil Ahmad

<sup>21</sup> Mohammad Allahabad v. Mohammad Ismail (1886) ILR 8 All 234



option of adoption to build their lives, but this rule puts a stop to many couples' futures. An individual has the provision of adopting under the Guardians and Wards Act, 1890 with a court order, but it is a very tedious process and the couple also gets a lot of backlash from their community which makes it difficult for the adopted kid to grow peacefully.

Justice Kuldip Singh reiterated the need for parliament to frame a Uniform Civil Code.<sup>22</sup> The same provision was also required in the cases of **Jordan Diengdeh v. S.S Chopra**<sup>23</sup> and **John Vallamattom v. Union of India**.<sup>24</sup> One cannot approach the court to demand Uniform Civil Code, as it is neither a fundamental right nor a constitutional guarantee, but this shall not mean that India cannot have a civil code which would govern them uniformly without any biases or inequality.

The State does not interfere with religious matters, and religion must not interfere with the efficacy of the State.<sup>25</sup> Religion is important for people in their personal lives, but a State cannot run solely on the basis of pleasing people and overlooking the need of the country which would eventually benefit the society itself.

In the case of **S.R Bommai v. Union of India**,<sup>26</sup> Justice Jeevan Reddy said that, "Religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the state by enacting a law."

## CONCLUSION

<sup>22</sup> Sarla Mudgal Case, 1995

<sup>23</sup> 1985 AIR 935, 1985 SCR Supl. (1) 704

<sup>24</sup> 2003

**"Growth is painful. Change is painful. But nothing is more painful as staying stuck somewhere you don't belong."**

Uniform Civil Code is that much awaited change that our country needs after all the development that our country has gone through. A completely new law will obviously cause a little stir in the country, but there are a few ways through which this law can be implemented seamlessly:

- The code should be framed lawfully. No cultural laws should be referred to while drafting the rules, and the complete act should not have provisions which are new to the country so that no bias can be formed.
- State should reassure the citizens that their religions would not undergo any change; they would follow all their customs without any modifications except those laws which need to be secular and equal towards all citizens, and can be regulated by statutes.
- The Government should make sure that the country is prepared for this new legislation, by arranging for workshops and public counseling on a wider and manageable platform like televisions so that everyone has access to those programs and the doubts that people have, can easily be clarified.

The code must carve a balance between the establishment of fundamental rights and religious dogmas of citizens. Individuals should not feel out of place in their own country, moreover they should understand the need and importance of Uniform Civil Code.

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<sup>25</sup> Legal Service India

<sup>26</sup> ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1)