



## ARTICLE 44 OF INDIAN CONSTITUTION-YET TO BE DELIVERED

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### ABSTRACT

Why can't there be a single line of command or a single code governing a whole country like India. India is a democratic country of vast diversities, cultures, religions, beliefs, where a single uniform code implementation has to be done in a very thoughtful way and in a considerate manner, as there can be conflict of opinions, laws, and beliefs. In a heterogeneous confederation like India it is very challenging for the government to implement a uniform civil code. Article 44 bestowed in the Directive Principles of State Policy by our Indian Constitution provides for a Uniform Civil Code across the country. The state is endeavored to secure for its citizens a single uniform code in the territory and strives to achieve it in the best interests of the citizens of the nation. One country one rule is probably a need of the hour so that every citizen's fundamental as well as constitutional rights can be protected. The term secularism has always been a debatable issue of this country and holds a critical view amongst the scholars and the various other analysts. There are personal laws which are still very relevant and enforceable in the eyes of law, regardless of the significant constitutional laws provided by the country to be enforceable upon each and every citizen equally. This article tries to study all the aspects of Article 44 of the constitution and the imminent necessity for its implementation. The article has been written meticulously and with a reader friendly approach.

**Keywords:** Uniform Civil Code, Constitution, Article 44, secularism, UCC.

### INTRODUCTION

Secular nation is the nation which is free from religious bias, which is independent, and takes decisions for the state without the interference of religion. India is the country with the largest democracy in the world. Its constitution states that India is a secular democratic and republic. The word secular being inserted in the 42<sup>nd</sup> amendment of the constitution in 1976, there exists no state religion. However there has been interference of the state in many religious matters to remove any impediments and to prosper peace and harmony. Thus, process of Secularization of the country and the goal to implement Uniform Civil Code go hand to hand like a cause and effect relationship.

Though India is a secularist nation, much importance is given to religion, and is an integral part of people's life and tradition. The numerous religions and their traditions have given rise to personal laws which depict their various beliefs, customs and the practices performed by individual religious groups. For instance, Hindus have Hindu Marriage Act, Hindu Adoption and Maintenance Act, Guardianship Act, etc., similarly Muslims, Christians, parsi, are governed by their own personal separate laws, therefore equal distribution of justice is not possible as different judgements had to be served depending upon the personal laws applicable to different religions. To achieve the status of secularism in the country, a uniform application of distribution of justice is a major concern and therefore an idea of Uniform Civil code was mooted for the first time in 1947 in the constituent assembly.



## THE CONFLICT OF UCC, SECULARISM AND PERSONAL LAWS

“The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the country of India.”<sup>1</sup>The Directive principles of state policy enshrined in the Indian Constitution are the principles for which the state shall strive to secure for its citizens. It has been more than 70 years since the birth of our constitution, but the level of sophistication towards the constitutional mandate is yet to be accepted because still the hatred between Hindus and Muslims prevail, as the opinions are based upon the conflicts that arose during India’s Independence. Therefore, the uniform codification is possible when there’s balance between both, the fundamental rights as well as the religious principles of different religious groups including their personal laws and mandates. In the famous case of **Shahbano begum**<sup>2</sup>, the Supreme Court resorted to Section 125 of Criminal procedure code for providing maintenance to shahbano, as the personal law i.e. the Islamic Law denied for the same. The Central Government was persuaded to establish a “Common Civil Code” for this purpose and various recommendations were made to setup UCC. However Muslim Women’s (Right to protection on divorce) Act was passed instead of implementing a common civil code regarding the issue of maintenance of divorced wife country wide. Similarly, in **Sarla Mudgal V. Union of India**<sup>3</sup>, the urgency to implement Uniform Civil Court was observed which would help in national integration and remove the ideological contradictions.

Justice R.M Sahai has rightly said in his judgement that, ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. 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>4</sup> One of the major dilemmas of Indian Judiciary has been the conflict between governance Personal Laws and other by Part III of the constitution, where both are inconsistent when we talk about ensuring religious opportunities and social privilege to minorities under Article 25 to 30, and on the other side, the religious communities inferring the privilege to be represented by their own personal laws. The Landmark case of **Narasu Appa Mali**<sup>5</sup> was in this connection and threw some light on this dilemma where the validity of “Bombay Prohibition of Bigamous Marriage Act 1946, was challenged on the basis of Article 14,15 & 25 of Indian Constitution. Due to the absence of a Common civil code the contentions were raised upon the inconsistency of the Act, mainly with Article 14 and 15. The Hindus were restricted upon the bigamy marriage practices, while the Islamic act had no change upon the same and were at full liberty to contract more than one marriage. The act of polygamy was contented as discriminative on the grounds of religion under article 25 of the constitution, and therefore was considered permitted

<sup>1</sup> The Constitution of India, Article 44.

<sup>2</sup> Mohd. Ahmed Khan V. Shahbano Begum (AIR 1985 SC 945,954: (1985) 2 SCC 556.)

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

<sup>4</sup> Ibid.

<sup>5</sup> State of Bombay V. Narasu Appa Mali, (AIR 1952 Bom 84.)



classification on the grounds of religion. C.J. Chagla in his decision said that, “Article 14 does not lay down any legislation that the state may embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring about social reform by stages, and the stages may be territorial or they may be community wise, and that the discrimination was intelligible differentia does not offend the equality provisions of the Constitution.”

### **Gender Discrimination Vs. Uniform Civil Code.**

Article 44 is a directive principle of state policy and cannot be enforced in the court of law. It is the duty of the state to introduce a uniform civil code. When the proposal was put forward in the constituent assembly, there was a widespread dissension regarding its introduction, especially by Muslim leaders and members who thought that it would rather bring conflicts and resentment among various religious groups and was of the opinion that, it is a right of every citizen to follow their own personal law which is part of their belief and culture, but uniformity in the civil law will never be in the interest of the citizens. K.M Munshi, who is one of the members of the Assembly, strongly believed that if the personal law of inheritance, and succession etc is considered as a part of their religion and culture, women can never achieve a sense of equality in this country. However, Dr Ambedkar dispelled the arguments of the Muslim Members of the Drafting Committee, and gave many instances where uniformity of code exists and he opined that, in the future it is surely possible for the parliament to amend and implement the laws in a voluntary manner with seeking declaration of those who are ready to be bound by such code. Gradually, the

progress in the implementation of UCC could be brought into effect.

The Constitution framers therefore were aware of the gender injustice and bias which might come out as a big problem in the future and keeping this in mind, Article 44 was incorporated in favour of the people of India in a hope that it would be introduced eventually.

If we think from a human rights perspective, gender discrimination, equality, principle of fair and just are the natural rights of human beings and the same are enshrined in the Indian Constitution. There is a subsequent amount of contradiction in the constitutional provisions of human rights guaranteed in Part III and the personal laws, which has become a debatable issue now a days. In Article 15(3) of the constitution, the state is empowered to make special provisions in regards to protection of women and children. Article 25(2) provides that irrespective of freedom of religion, any social reform and welfare can be provided for the betterment of the country. The state being ignorant, has never been able to implement a law opposing the personal laws which are ultravires to the constitution. These antiquated norms of discrimination in the name of religion has to be eliminated, by urgently implementing Uniform civil code so as to bring gender equality and non-discrimination on the basis of caste or religion.

The women of the country have come forward in favour of uniform civil code, beginning from the All India Women's Conference held in 1937 and ending up with the implementation of Domestic Violence Act 2005, Juvenile Justice Act 2006 etc. India has been constantly working for the



development of women and has been a party of various international conventions on gender equality and women empowerment, one of which is CEDAW. CEDAW focuses on the elimination of all forms of discrimination against women and has provided for a special programme for protection and promotion of women's human rights. With regards to Article 5(a) and 16(1) of the convention, India declares that, "it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent".<sup>6</sup>

#### **THE STEPS TOWARDS UCC, A BOON OR BANE?**

The only union territory in India with a uniform civil code is Goa. Goa has always been an inspiring example to have achieved uniformity in its laws with the spirit of unity in its citizens regardless of any religion. It's a sustainable model of UCC successfully implemented and is still working without any controversies and belligerence by its people. The Portuguese Civil Code, 1867 is set of regulations including the personal matters of marriage, inheritance, maintenance, divorce and other such family matters with a separate special marriage Act governing such marriages, which are independent from any religious clutches.

Since the codification of Hindu law in 1956, the governments have failed to promulgate a UCC guaranteed in Article 44 of the

constitution<sup>7</sup>, because the concept of secularism has been misinterpreted by assuming a state to have a common state religion. Though, the state is a body of no religion and promotes co-existence of every religion is not anti-religious. The misinterpreted concept of secularism thus goes against the soul of our preamble and to the right to freedom of practice of religion under our constitution. India, because of its wide diversity in religions have never been able to evolve and reform in a way to work as one nation as other countries like Canada and America. There has always been an element of religion in every political aspect of India. Thus, there exists "positive secularism", where state has to take the responsibility to remove any religious impediments in its proper governance. So, therefore we must say that UCC will never oppose secularism. The Article 44 speaks out that the matters of marriage, inheritance, divorce, maintenance, adoption, are of secular nature and there can be a common civil code to regulate them across the country.

The issue of UCC implementation is though very complicated and sensitive, is also important and exigent. To be speaking reasonably, there hasn't been any substantial debate on the topic of UCC. The protagonists play in a political rather in a sentimental way. One community speaking about the modernity in thoughts and the future development, and the other, opposing it with embracing the quotes and values given to them by their culture and the ever-lasting

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

<sup>7</sup> Krishnadas Rajagopal, 'Government has failed to bring in Uniform Civil Code, says Supreme Court', *thehindu.com*, New Delhi, 2019, <https://www.thehindu.com/news/national/government-has-failed-to-bring-in-uniform-civil-code-says-supreme-court/article29412592.ece>



history of their personal laws. There haven't been any fruitful debates in suggesting any ideas or proposals to bring a change in the existing law enforcement. The minority community of Muslims, are mainly the ones opposing uniform civil code in a fear to be drawn into nations mainstream of national integration, and would lose their distinct identity as Muslims. The Muslims being in minority are often seen objecting to uniform civil code because they feel that it would hamper with their religion and culture<sup>8</sup>. This insecurity has led to the emergence of communal forces in the country especially after the Babri Masjid demolition. The co-existence of communities is very important for national integration which can only be achieved through uniform code across the nation. The reformation is a necessity in the personal laws which are tyrannical towards women. The reformative change in Islamic law for instance, is very difficult as they live in a particular way with certain principles, which guide them, and are said to be the basis of their religion. It is always said that change is the law of nature and thus for its reconstruction, the change may not be contrary to the objectives and study of Islam but should be made with an intention of securing a happy and prosperous future ahead.

There of course are various conditions and terms which the state shall have to be considerate about while forming a uniform civil code for the country keeping in mind the

best interest of each and every religion including the minorities, but shall for sure exclude all the orthodox practices which are active in the name of religion and personal laws, like polygamy, divorce, nikah-halal, maintenance, alimony, adoption etc. The Muslim law for instance, does not impose any obligation on the husband to provide maintenance after the period of iddat to his divorced wife and let him discard her as an object whenever he wants. This ruthless treatment towards a woman has to be stopped. The solution to this backwardness is making people aware of their rights and obligations, and to provide them with the basic moral education. It is the duty of the Muslim intelligentsia to educate the community of Muslims. There are of course many Muslim activists who are in support of UCC, and joining the chorus for it<sup>9</sup>.

The loophole in the current law enforcement is the governance of the inconsistent personal laws. A Uniform Civil Code is a way to oppress these laws with modern intellect towards a progressive country. It was rightly said by the Union Law Minister, Ravi Shankar Prasad, "Our focus is purely on gender justice, gender equality and gender dignity. The government will follow the Constitution, and that it completely respects the freedom of religion and faith, but every practice which is unfair and discriminatory cannot be integral to the Constitution."<sup>10</sup> The UCC promotes Secularism in its real way and is not violative of Article 25 and 26 of the

<sup>8</sup> 'Muslim Personal Law Board opposes Uniform Civil Code', *The Hindu*, New Delhi, 2016, <https://www.thehindu.com/news/national/Muslim-Personal-Law-Board-opposes-Uniform-Civil-Code/article15503160.ece>

<sup>9</sup> Navtan Kumar, 'Muslim activists seek UCC, go to Supreme Court', *Sunday guardian live*, New Delhi, 2019,

<https://www.sundayguardianlive.com/news/muslim-activists-seek-ucc-go-supreme-court>

<sup>10</sup> Times Now Bureau, 'Discriminatory practices can't be integral to constitution', *TimesNow News*, 2016, <https://www.timesnownews.com/india/video/discriminatory-practices-cant-be-integral-to-constitution/50591>



constitution. It regards every person to be treated equally regardless of religion he/she pursues.

### CONCLUSION

The Social reform in the implementation of UCC is a gradual process, and has to be achieved in stages. This needs dedication by the government as well as by the people of India to come forward as one entity in the nation's one of the major revolutions. Article 44 of the constitution guarantees the codification and unification of all the personal laws together in one code. UCC is definitely the most effective and the most desirable codification, which would help in strengthening of the nation-hood. The state should find a common consensus to settle this issue as soon as possible instead of just making it as a topic for the debates. The aged old customs and traditions of various personal laws which are mostly Patriarchal, should be reformed giving equal rights to both men and women. When we talk about a common code, we talk about gender justice, indiscrimination on the basis of sex, race, religion, caste, gender, equal rights to both men and women over inheritance and the provision for maintenance to either of the spouse. If there exists a will to do something or to accomplish a goal there is always a way to achieve it. UCC will help the society to move forward towards the goal of becoming a truly developed nation. The Constitution has been formed to maintain law and order in the country and therefore it is very necessary for every community to accept it and most importantly to pursue it. Article 44 has till now remained a dead letter but now needs to be opened and worked upon. Justice Y.V

Chandrachud rightly opined that, "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. A beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts"<sup>11</sup>

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<sup>11</sup> Mohd. Ahmed Khan vs Shah Bano Begum And Ors (AIR 945, 1985 SCR (3) 844).