

## UNIFORM CIVIL CODE - BOON OR BANE TO INDIAN WAY OF JUSTICE SYSTEM

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### **ABSTRACT**

*The article imparts the statement of Mahatma Gandhi: "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." Further, the author strives to furnish the origination of UCC in the country through the introduction of various statutes and provisions in the following postulation. It also bestows the speech of K.M. Munshi in the Constituent Assembly: "There are many factors—and important factors—that still offer serious dangers to our national consolidation, and it is very necessary for the whole of our lives, as far as they are restricted to secular spheres, to be unified in such a way that, as early as possible, we may be able to say, Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are consolidated nation."*

*The key factors that serve as a blessing and curse upon the implementation of the Uniform Code in the country has been portrayed in the composition. The current scenario in India on the debate of the uniform code is witnessed with the mentioning of crucial landmark cases that contributed to warming up the issue of UCC in our country. Some of the strategies that will be helpful in the successful enactment of UCC in the country has also been highlighted in the following postulation.*

**KEYWORDS:** *Freedom of Religion, Gender Justice, Minority Rights, Personal Laws, Uniform Civil Code.*

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### **INTRODUCTION**

The Uniform Civil Code (herein after mentioned as UCC) is a legal framework that provides uniform laws and provisions applicable to all the citizens of the country, irrespective of their faith, religion, and values. It aims to replace the personal laws in the areas of marriage, divorce, inheritance, maintenance, adoption of children, and many more. The Personal Laws are solely based on religious customs, duties, faiths, beliefs, and traditions, along with the holy books and scriptures. The idea of a uniform civil code can be traced to Article 44 of the Indian Constitution, which mentions, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."<sup>2</sup>

The history of the country bears witness to certain events that led to the formulation of the Code. During the Pre-Independence period, also known as the Colonial Era, there were two reports submitted that worked as the first step towards the formulation of UCC in India, which are as follows.

### **Lex Loci Report**

This report was submitted in October 1864 and focused on the adoption of uniform laws in the fields of crime, contract, and evidence, but at the same time, it held that the personal laws of Hindus and Muslims would not fall within the codification of uniform laws.

### **The Queen's Proclamation**

It was held in the year 1859, and it swore for complete non-interference in any of the religious matters.

Thus, the reforms held through the reports in the pre-independence period were only confined to the uniformity of the criminal law relating to crime, contract, or evidence, while personal laws were working independently for their respective communities.

In Post-Independence period, is also known as the post-colonial era, includes the time between 1947 and 1985. During this period, the Constitution of India was drafted, and several distinguished leaders such as Jawaharlal Nehru, Mahatma Gandhi, and Dr. B.R. Ambedkar introduced the concept of UCC under Article 44 of the Constitution. They also introduced certain reforms that led to the development of the country, which are as follows:

### **The Hindu Code Bill**

The bill was drafted by Dr. B.R. Ambedkar in order to reform Hindu laws, which legalized divorce, abolished polygamy, and provided inheritance rights to the daughters. This bill was further divided into four other statutes, which specifically deal with the principal subject mentioned in the Act. The four Acts are as follows:

#### **Hindu Marriage Act**

This Act was drafted on May 18, 1955. It abolished the practice of polygamy in Hindu society and legalized monogamy for Hindus. This Act also mentions certain clauses related to Hindu marriage, such as Prohibited Degrees, maintenance rights, grounds for divorce, grounds for invalidation of marriage, etc.

#### **Hindu Succession Act**

This Act was drafted in 1956. It mentions the succession rights of Hindus in the paternal, maternal, or in-laws' property. Earlier, the daughters had no share in their paternal property, but through the amendment held on September 9, 2005, they were provided with an equal share in their paternal property.

#### **Hindu Minority and Guardianship Act**

This Act was drafted in 1956. It mentions the guardianship rights of the Hindus. This Act also mentions certain clauses related to the grounds for being the Natural Guardian of a Hindu minor, the natural guardian of an adopted son, etc.

#### **Hindu Adoption and Maintenance Act**

This Act was drafted in 1956. It mentions the adoption and maintenance rights of Hindus. This Act also mentions certain clauses related to the grounds for a valid adoption, the person qualified to adopt, the amount of maintenance, the maintenance rights of the wife, children, parents, etc.

### **Special Marriage Act**

This Act was drafted in 1954 and mentions the laws for civil marriages without any relation to any religious personal law. This Act mentions certain clauses related to objection to marriage, the role of parties and witnesses in the marriage, grounds for void marriages and voidable marriages, the procedure for registration of marriages, etc.

### **UNIFORM CIVIL CODE: BLESSING OR CURSE**

Throughout the debate on UCC, some of the people witness its implementation as a blessing for the society. They consider that the implementation of UCC will help to reduce the workload of courts as they are mostly overburdened with cases of religious disputes and interpretation of religious personal laws. There are some of the following factors that serve as the blessing for the implementation of the Uniform Civil Code in our country:

#### **Gender Equality**

We sadly witness the extent of discrimination held on the basis of gender in the purview of personal laws across various religions in the country. It has been argued by several liberals and women's groups that the uniform civil code gives women more rights.<sup>3</sup> This code ensures the equal treatment of individuals before the law and abolishes gender discrimination, irrespective of their religion or community. Thus, it will lead to the overall progress and participation of women in the social, political, and economic fields of society.

#### **Simplification of Laws**

The analysis and scope of individual personal laws are unique in character, which differs from other laws. The differential interpretation and implementation of these laws is a difficult task that promotes specific treatment of individuals based on their religion or faith. The UCC helps simplify the complex statutes and provisions and applies to all citizens, irrespective of their faith and beliefs. It will harmonize the personal laws and reduce the confusion, resulting in a more efficient and effective functioning of the Judiciary.<sup>4</sup>

#### **National Integration**

The personal laws are specific to the particular religion, which often collide with the other laws in their working and functioning independently. Implementation of UCC will ensure a feeling of oneness and brotherhood among the citizens of the country. It will achieve the principle of "One Nation, One Law". It will overstep religious boundaries and promote a common identity for all the citizens of the country. Thus, there will be no scope for politicization of issues of discrimination, concessions, or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.<sup>5</sup>

#### **Establishment of a Secular Society**

Although the word "Secular" has been added through the forty-second amendment of 1976, it cannot be implemented properly due to the prevalence of different personal laws for different religions. The personal laws provide their provisions in the areas of marriage, divorce, child adoption, and many more, which become the main cause of discrimination and inequality among citizens on the basis of their faith, religion, and beliefs. The adoption of UCC will definitely achieve the goal of a socialist and secularist pattern of society. Further, it will satisfy the constitutional mandates of Article 44 of the Directive Policy of State Policy.

### **Protection of Minority Rights**

The religious personal laws specify the provisions and statutes for the specific religious communities, but in practice, they ignore third-gender citizens. The personal law remains silent on the rights of the LGBTQI+ community. The implementation of UCC will enhance and promote the rights and liberties of these communities. Protecting minority rights and preserving their distinct practices is considered a crucial factor in a pluralistic society like India.<sup>6</sup>

Through these factors, we come to know that in these areas, the implementation of UCC is a blessing for the society. Some of the followers believe that the adoption of uniform code will eventually lead to the national integration, which will further tighten the bond of love and brotherhood among the citizens of the country. It will further ensure gender justice as there are various instances of discrimination held on the part of women by the religious personal laws.

As it is not possible of not having opposition on any legal amendment to be made in the provisions of the country. In our case as well, the implementation of UCC is a curse for the society according to some thinkers. They consider that the adoption of UCC is a sensitive topic, the decision of which should be left upon the citizens as the enactment of Uniform Code will harm the religious identities of various religions in its practice. There are some of the following factors which serve as curses upon the implementation of the Uniform Civil Code in our country:

### **Cultural and Religious Sensitivities**

The personal laws derive their origins from the customs, traditions, and practices of that particular religious community. The adoption of UCC will eventually infringe on their unique cultural identity within various communities. It leads to the potential erosion of cultural and religious rights.<sup>7</sup> The implementation of UCC will coerce individuals to abide by the universal laws of the country, even if it goes against their religious beliefs and customs. It will further harm individual sentiments and emotional attachments towards their religion.

### **Resistance from Minority Communities**

India is popular for its cultural and religious diversity around the world. It is argued that the implementation of UCC will serve as a threat to the practice of their cultural and religious rights. Minority communities may perceive it as an interference in their personal matters and view it as a hazard to their religious autonomy. It may further lead to a rise in feelings of marginalization and alienation within minority communities.<sup>8</sup>

### **Complex Implementation Procedure**

The implementation of UCC in India is not an easy cake; it is a sensitive and tough task to implement in reality. The religious communities often consider its implementation a harm to their cultural and minority rights. The cultural differences between different states and communities work as a potential hindrance to the implementation of a unified law. It is also held in various claims that there is a requirement for extensive consultation and consensus- building among various religious groups, which may be challenging to achieve. Any attempt to impose a UCC without adequate consensus will lead to social unrest and discontent in the country.<sup>9</sup>

### **Harm to Religious Freedom**

It is held that the Right to Equality as enshrined under Articles 14 and 15 goes in conflict with the Right to Freedom of Religion as laid down under Articles 25, 26(b), and 29 of the Indian Constitution. The codification of uniform rules and their compulsion may reduce the scope of the freedom of religion provided to the citizens of the country.<sup>10</sup> Thus,

it often discourages the implementation of UCC as it stands in opposition to the fundamental rights of citizens as well as religious communities.

Thus, we conclude that the implementation of UCC is a curse for the society as it harms the rights of minorities. There is the prevalence of 'Majoritarianism Syndrome' in the country which will prevail over the rights of minorities. It is also submitted that the procedure of implementing the Uniform Code in the country is quite difficult due to the political brawl of the politicians and the citizens in the country.

## **LEGALITY OF UNIFORM CIVIL CODE**

Our country has witnessed various case laws that lead to the origination of political debate over the enactment of UCC by the Parliament of India. The provision for the enactment of Uniform Code is present in the Constitution itself, but its implementation could not be made till now due to various causes such as religious clashes, political battle, strong belief over religious personal laws, and many more. There are some of the crucial case laws that are responsible for bring awareness among the citizens towards the implementation of UCC in the country:

- Ahmed Khan v. Shah Bano Begum<sup>11</sup>

This case is popularly known as the 'Shah Bano Case'. In this case, Shah Bano is a Muslim woman who was married to Mohd. Ahmed Khan in 1932. She was expelled from her house in 1975, along with her children. She demanded Rs. 500 per month as maintenance under Section 125 of the CrPC (Code of Criminal Procedure) in the Judicial Magistrate of Indore, after which she was given irrevocable triple talaq on November 6, 1978. He used the talaq policy as a defence for paying maintenance, which was challenged in the High Court by the wife and then in the Supreme Court by the husband.

In April 1985, a Constitutional Bench of five judges, including Chief Justice of India Y V Chandrachud, dismissed the appeal of Mohd. Ahmed Khan and granted an additional sum of Rs. 10,000 as cost to be payable to Shah Bano Begum along with the maintenance. It was further held by the Supreme Court, "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. There is no evidence of any official activity to frame a common civil code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to laws that have conflicting ideologies. A beginning has to be made if the Constitution is to have any meaning."<sup>12</sup>

The verdict of the Supreme Court in the case is termed a landmark judgment as it fostered strength and courage in the Muslim women to seek maintenance from their husbands after their divorce. The case has infuriated the debate over the implementation of UCC in the country, as the minority communities, especially the women, are suffering a lot as their rights and liberties are denied at every stage of life. Some aggrieved Muslim women view the implementation of UCC as beneficial for their well-being and safety because there are some provisions in the Muslim Personal Law such as marriage being a contract, polygamy being allowed only to men, maintenance issues, and many more.

- SarlaMudgal, President, Kalyani v. Union of India<sup>13</sup>

There were three petitions filed under the same case where both parties were suffering from the same circumstances. SarlaMudgal is the president of an NGO named Kalyani, which aims to help stressed, lonely, and helpless women. In one of the petitions, a woman named Meena Mathur was married to Jitendra Mathur in 1978 and, after some time, found that her husband had converted to Islam in order to marry another converted woman named Fatima, originally

named Sunita Narula. In another petition, Sunita Narula (Fatima) accused Jitendra Mathur of refusing to provide maintenance to her but agreeing to pay maintenance to his first wife. She stands helpless because she has no relief or remedy available under the Shariat Law of 1937.

In the last petition, the petitioner, Geeta Rani, was married to Pradeep Kumar as per Hindu rites, and she accused her husband of assaulting her. She further held that her husband married another woman named Deepa after getting converted to Islam in order to bypass the provisions of Section 494 of the IPC (Indian Penal Code). The Supreme Court held that second marriage is illegal in the eyes of the law and is also against the principles of natural justice. It was further stated by the Court that it is arbitrary to allow individuals to solemnize their marriage without dissolving their prior marriage after conversion to Islam, which becomes the clear way to circumvent the provision of Section 494 of the Indian Penal Code.<sup>14</sup>

Through this landmark judgment, the Supreme Court again favoured the issue of the implementation of the Uniform Civil Code and held that its adoption is necessary for dissolving the multiple matters of matrimonial issues, divorce issues, maintenance problems, child adoption, and so on. It once again viewed the implementation of the UCC as beneficial for bringing personal laws under the control of the unified code.

- ShayaraBano v. Union of India<sup>15</sup>

This case is also known as the Triple Talaq Case, where the practice of triple talaq specified in the Shariat Law of 1937 was the foremost issue at hand. In the case, the five writ petitions were brought together by five Muslim women who suffered divorce from their husbands under the principle of triple talaq. In the case, the petitioner, Shayara Bano, a 35-year-old lady with two children, was divorced in the month of October 2015. Two Muslim women's groups, namely 'Bhartiya Muslim Mahila Andolan' and 'Bebak Collective, intervened in the matter, but the interpreter of Shariat Law, 'All India Muslim Personal Law Board, defended their age-old practice.

In the Masilamani Mudaliar case and the other cases<sup>16</sup>, the Supreme Court tested the personal laws on the touchstone of fundamental rights and held that Muslim personal laws should be considered laws in force' within the meaning of Article 13(1) of the Indian Constitution. As the Shariat Law is a pre-constitutional law, the Act will fall within the expression laws in force' and will be checked by "Article 13(1) if found to be inconsistent with the provisions of Part 3 of the Constitution." The Landmark judgment was given by the Constitutional Bench, including Chief Justice of India U.U. Lalit, where it was held that the triple talaq was valid without any "reasonable cause" and did not allow for "any attempt at reconciliation between husband and wife." They concluded with the statement, "This form of triple talaq is manifestly arbitrary... In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression 'laws in force' in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq."<sup>17</sup>

This verdict was indeed one more step towards the implementation of the Unified Code in India. This case has given zeal to the debate over the identity and dignity of the personal laws in India, be they Shariat Law or the Hindu Code Bill. The decision in the case paved the way for future amendments to personal laws as well as social changes in the country. The case has developed the rights of minority communities, especially Muslim women, who lie worried and helpless about being divorced without specifying any reasonable cause. Through the analysis of the case laws, we conclude that the religious personal laws have witnessed various times, the discrimination and harm to the basic rights of women.

These cases serve as the clear witnesses of injustice held on the part of women through the application of different religious personal laws. There are some case laws that contribute to bringing awareness regarding the implementation of UCC in the country such as Pannalal Bansilal Patil v. State of Andhra Pradesh, Noor Sabha Khatoun v. Mohd Quasim, and many more.

## CONTEMPORARY ANALYSIS

We are fully aware of the current debate over the utility and implementation of the Uniform Civil Code in the country. As it is a heated topic in the country, many political leaders, along with the various recognized religious communities, have given their brief, sometimes contradictory, clashing, and divergent views on the topic. After the delivery of several Supreme Court verdicts on various cases like the Shah Bano case, the SarlaMudgal case, the Women Action Group case, and many more, the issue of a unified code came to light. This issue was finally taken up when the Bhartiya Janata Party returned to power in the 2014 general elections, after which the National Commission of the country raised the questionnaire for the public in order to comment on their opinions about the unified laws.<sup>18</sup>

While discussing the case in favour of UCC, K.M. Munshi held in the Constituent Assembly, "There are many factors—and important factors—that still offer serious dangers to our national consolidation, and it is very necessary for the whole of our lives, as far as they are restricted to secular spheres, to be unified in such a way that, as early as possible, we may be able to say, Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are consolidated nation."<sup>19</sup> In our country, the minority groups regard the implementation of UCC as a threat to their religious beliefs, faiths, and identities because the unified laws will act according to the majority opinion, and their welfare and opinions will be sacrificed at the cost of the majority citizens.<sup>20</sup>

It was further held that the religious denominations were provided the right to freely manage their own matters and affairs under Article 26<sup>21</sup>, but it did not contribute greatly to the women's section of society.<sup>22</sup> The reason behind it is that especially Muslim and Hindu religious groups use the tool of personal religious laws in order to manage the governance of their respective groups, which works as a disadvantage to women.<sup>23</sup> Therefore, the thought of achieving a common identity seems undesirable, as India is known for its plurality and the synthesis of different views of every Indian citizen inspired by his or her regional culture and values.<sup>24</sup> Thus, a country does not want the implementation of UCC but the implementation of formal as well as substantive equality at all levels.<sup>25</sup> The basic reason behind the non-implementation of UCC till now is that it is not mandatory for the government to implement it. Even during the meetings of the constituent assembly during the formulation of Clause 39 (Article 44), the making of the UCC was strongly opposed<sup>26</sup> with the help of two arguments, which are as follows:

- It will violate the Freedom of Religion provided under Article 25 of the Indian Constitution.
- It will ensure tyranny for the minorities.<sup>27</sup>

The Supreme Court opined that the prevalent example of the successful working of the UCC is Goa, where it was introduced in the year 1870, changed from time to time, and became the modern version of law in the year 1966.<sup>28</sup>

## CONCLUSION

It is further held that the plurality of laws and personal laws serve as a direct blow and threat to national integrity and solidarity. There are various foreign countries that have witnessed the successful functioning of their economies after the implementation of the Uniform Civil Code, such as Germany, France, Spain, Canada, Japan, Turkey, and Portugal. If the British government could formulate uniform laws such as the Child Marriage Restraint Act in 1929, the Indian Succession Act in 1925, and the Guardians and Wards Act in 1890, then the Indian government could also enact the same even after representing the different religious communities. It is advised that the Indian government take effective measures for enacting the Uniform Civil Code in the country by including the best elements of the civil laws of the different religious communities, which will fulfil the positive obligation imposed upon it by Article 44 of the Indian Constitution.<sup>29</sup>

There can be successful enactment of the Uniform Civil Code in the country with three basic strategies, which are as follows:

- Framing a common code but making it optional for some time so that the public gets in the habit of it.
- Making gradual changes and transformations in the uniform code by adopting 'increment changes' after some time.
- Framing the draft of the Uniform Civil Code and opening it for parliamentary and public scrutiny and examination.<sup>30</sup>

Though the Constitution held that the Directive Principles of State Policy (DPSP) shall not be enforceable by any court, it also held that they are fundamental to the governance of the country and that it is the duty of the states to apply those principles in making the laws.<sup>31</sup> We have to accept that UCC is not an ordinary law, but it leads to actual social and gender equality, secularism, and justice for women in the country. The government must educate individuals about the unified laws; these laws must accomplish the common goals of all the religious communities; they must promote welfare and gender justice; and they must eliminate discriminatory practices prevalent in personal laws in order to promote peaceful adoption of UCC in India. UCC is a must where secularism is used as a tool to solve the atrocious problems of the country.

It is humbly suggested India should adopt it for progressive legislation, and it must ensure the protection of fundamental and constitutional rights irrespective of religion, caste, or community. In the words of Mahatma Gandhi, "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 religions working side-by-side with one another."<sup>32</sup> The UCC must ensure a proper balance between the fundamental rights and religious beliefs of the people so that it may sound just and proper without any bias towards religious or political considerations. Efforts should be focused on harmony in plurality rather than blanket uniformity for a flourishing Indian democracy.<sup>33</sup>



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