



SAMVAAD 2017

**COMPENDIUM ON
THE UNIFORM CIVIL CODE**

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COMPENDIUM ON THE UNIFORM CIVIL CODE

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Introduction

UCC is the notion of replacing the personal laws based on religion in the country with a common system governing every individual. These laws include marriage, divorce, inheritance, succession, adoption and maintenance. Art. 44 of the Constitution makes it the duty of the State to implement UCC. Currently, Goa is the only state in India having a common family law. The Special Marriage Act, 1954 permits any citizen belonging to any religion to have a civil marriage outside the purview of a specific family law. A major reason why it has not been practiced in the country is the principle of non-interference in domestic life in a secular country.

The first case which highlighted the gap in securing rights of multicultural citizens was the Shah Bano case of 1985. The uncodified and unreformed Muslim Personal Law was brought under scrutiny for practices like triple talaq and polygamy which tend to go against the very basic tenets of fundamental rights granted under Art. 14.

History

East India Rule

Reform in social customs and religious practices was undertaken by people like Lord William Bentinck, who abolished Sati with the Bengal Sati Regulation Act 1829

British India

Lord Bentinck passed Sati Regulation Act, 1829, in the pursuance of reforming Indian socio-religious customs. The Queen's Proclamation, 1859, promised absolute non-interference in religious matters and giving right to self-govern in matters pertaining to personal laws. The Hindu Widow Remarriage Act (1856), Hindu Inheritance Removal of Disabilities Act (1928) sought to secure rights of women who tended to be discriminated due to evolution of customary law practices. The widely opposed Hindu Code Bill was passed in four separate acts subsequently, and it was decided by the Constituent Assembly that UCC shall be endeavored to be implemented by the State under the Directive Principle of State Policy. Women members opposed this decision, and AparnaMahanta wrote, "failure of the Indian state to provide a uniform civil code, consistent with its democratic secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society."The Special Marriage Act, 1954 has been designed in a gender-neutral and universal applicable manner.

Pre-Independence

B.R.Ambedkar tried to reform Hindu law and customs and do away with the oppressive Brahmanical, caste-based system. He campaigned for abolishing caste differences and ensure that marriages across castes and sects are permissible. He also tried to do away with the notions of purity and pollution that continued to oppress women and stressed on the need to get rid of polygamy and give Hindu women the right to divorce and inherit property. This was opposed by several Congress members. There was also strong opposition to this by right-wing parties such as the RSS and Jan Sangh. Ambedkar also opposed Sati and other oppressive Hindu practices. His concern was mainly for the upper caste Hindu woman who was devoid of rights. At that moment the Muslim and Christian laws were far more progressive and awarded rights to women. Today, the situation has changed and the society

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has become even more communal and Article 44 is being used as a stick to beat the minorities with.

Post-Independence

The Supreme Court first directed the Parliament to frame a uniform civil code in the year 1985 in the case of Mohammed Ahmed Khan v. Shah Bano Begum. In this case, the muslim woman claimed for maintenance from her husband under S.125 of the CrPC, after being given triple talaq from him. The SC upheld her right to get maintenance from him under this section and observed that Article 44 had remained a dead letter. Chief Justice Y.V.Chandrachud observed that "*A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.*"

After this judgement, there were nationwide discussions, and a lot of agitation against the decision. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the UCC, not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

The second instance in which the Supreme Court again directed the government of Article 44 was in the case of *SarlaMudgal v. Union of India*. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnise second marriage The Court held that a Hindu marriage solemnised under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnised after converting to Islam would be an offence under Section 494 of the Indian Penal Code.

Justice Kuldip Singh also opined that Article 44 has to be retrieved from the cold storage where it is lying since 1949. The Hon^{ble} Justice referred to the codification of the Hindu personal law and held, "*Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the 'uniform civil code' for all the citizens in the territory of India.*"

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In 1994, in *S.R.Bommai v. Union of India*, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law. In India, there exist a concept of "positive secularism" as distinguished from doctrine of secularism accepted by America and some European states i.e. there is a wall of separation between religion and State. In India, positive secularism separates spiritualism with individual faith. The reason is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with religion. On the contrary, India has not gone through these stages and thus the responsibility lies on the State to interfere in the matters of religion so as to remove the impediments in the governance of the State.

Articles 25(9) and 26(10) guarantee right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion.

The Chief Justice also cautioned that any legislations which brought succession and like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation. Article 25 confers right to practice and profess religion, while Article 44 divests religion from social relations and personal law. The whole debate can be summed up by the judgment given by Justice R.M. Sahai. He said, "*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 freedoms 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.*"

The Supreme Court also sent in a reminder to the government of its Constitutional obligations to enact a UCC came in July 2003 when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The

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priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it impose unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that, "*We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.*" They also observed, "*It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.*"

In October 2015, Supreme Court of India asserted the need of UCC and said, "*This cannot be accepted, otherwise every religion will have a right to decide various issues as a matter of its personal law. We don't agree with this. It has to be done through a decree of a court.*"

Literature Review

The debate for a uniform civil code is one of the most controversial issues in the contemporary scenario. The major problems for the implementation are enumerated as: one, diversity of religious laws by sect, community, caste and religion; two, secularism as enshrined in the Constitution including the Preamble. Some more arguments include women's rights groups holding on to their rights and security, irrespective of its politicisation. However, the bonafide purpose of the same is strengthening the unity and integrity of the country and rejecting different personal laws, securing the importance for gender equality, and reforming the archaic personal laws of Muslims which allow social evils like unilateral divorce and polygamy.

Why Do We Need a UCC?

Constitutional Law must override Personal Law in Secular Republic. The Constitution has stuck with the „compromise“ that the implementation of the same shall be under the purview of the DPSPs, however, the recent uproar against the triple talaq system has once again brought back into focus the need to implement UCC in the pursuance of a common and undifferentiated law for all the citizens. The failure of the same has been blamed to be a factor in the slow progress of the nation and continuation of „divisionism“. Another important reason is to provide justice to the „oppressed“ gender over centuries.

The *Sarla Mudgal v. Union of India* judgment by Justices Kuldeep Singh and RM Sahai is a landmark in Indian socio-political history with the practice of a married Hindu man converting to Islam to marry again to a second woman being held bigamous and against the Indian laws. It becomes necessary to say this because of the following amazing order passed by Justice Kuldeep Singh and concurred in by Justice Sahai: *'We, therefore, request the government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and endeavour to secure for the citizens a uniform civil code throughout the territory of India'...* *'The Supreme Court cannot enforce the mandate of Article 44; consequently the aforesaid order is null and void. It is not the judiciary but the executive which can consider what law should be submitted to Parliament and it is the latter which alone can decide whether or not to enact a proposed law. Those who have studied Hindu law and Mohammedan law will realise that a common civil code for Hindus and Muslims alike is an impossibility.'*

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UCC is not opposed to secularism or will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion. The UCC will not and shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. This means that under the UCC a Hindu will not be compelled to perform a nikah or a Muslim be forced to carry out saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law.

Arguments Against

The implementation is widely seen as the will of the majority under the disguise of social reform. There is a deep distrust that the „uniform“ code will be the imposition of the Hindu customs in this pluralistic country. The Constitution also provides every citizen the freedom to profess, practice and propagate their religion under Art. 25, and thus overriding the same is not feasible. Part IV of the Constitution is not enforceable in any court of law in India. Whereas, fundamental rights are enforceable by the Supreme Court and the High Courts under Art. 32 and 226.

The Issue

Everything boils down to this: reformation of only the non- or anti-religious segments of personal laws which violate or threaten to violate core rights as granted by the Constitution. It is *not* to abrogate but to preserve. The need of the hour is to do away with discriminatory laws across communities and to give equal rights to women within the family. The fundamental basis of reform had to be on the principles of secularism, democracy and equal rights. Women organisations have opined that if certain cultural, customary practices were acceptable to women and were non-discriminatory, these could continue, but under no circumstance can their rights be subordinated to patriarchal concepts of multiculturalism. There need not be any dichotomy between personal laws and uniform laws as long as the underlying principle was equality and non-discrimination.

Long before the latest round of talks around a uniform civil code gathered momentum, Prof. Mahmood wrote *Uniform Civil Code: Fictions and Facts*. In this book, published in 1995, he

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quoted the famous Jorden Diengdeh case: *“The Parsi marriage law till this date contains provisions for special Parsi matrimonial courts—Parsi Marriage and Divorce Act, Sections 18-29; and the Parsi succession law is still close to the Islamic law in providing for daughters half of the sons’ shares in their father’s property—Indian Succession Act, Section 51. The amendments of 1988-89, notably have introduced no change in these special features of the Parsi personal law. Social reformers, however, have never frowned on these provisions of the Parsi personal law.”* The Christians, on the other hand, are not governed by a uniform law. *“Having a dominant majority in Mizoram, Nagaland and Meghalaya, a sizable percentage of population in Goa, Kerala and Manipurthe community has various kinds of religious laws and customs in force along with the central and regional statutory laws.”* Yet there is no voice saying that local Christian customs are an impediment to a uniform civil code.

According to Prof. Mahmood, Hindus keep silence when talking of a uniform civil code. It is the Muslims who get blamed as being an impediment to the code. The fact is that such a code is not even desired. The Special Marriage Act, 1954, was not used in 1955 when Parliament came up with another Act for Hindu marriages. It has become an optional (non-exercised) uniform civil code.

Even Flavia Agnes holds a similar view - that arguments in favour of a uniform civil code project Hindu law as just, in spite of many anti-women practices. When the law commission released a questionnaire on the uniform civil code, it gave rise to apprehensions among the Muslim community as the Uniform civil code is largely projected as gender justice in the Muslim community and Hindu law is projected as egalitarian.

Professor Nivedita Menon says that the idea of a Uniform Civil Code has nothing to do with gender justice, but entirely with a Hindu Nationalist agenda to discipline Muslims.

Article 44 figured as Article 35 in the draft Constitution. Sir Alladi Krishnaswamy Ayyar, a member of the Drafting Committee, said: *“The Future Legislatures may attempt a uniform civil code or they may not”*.

Obstacles in the Way to Create a Uniform Civil Code

As we understand the uniform civil code to be a mechanism of ensuring justice for women in things like marriage and inheritance, we might assume that a Uniform civil code is simply all the best gender-just practices in personal laws across all religions put together, resulting in practices like polygamy and arbitrary divorce outlawed, it is not quite that simple.

Flavia Agnes has often pointed out that a Uniform Civil Code would require the abolition of the Hindu Undivided Family, a legal institution that gives tax benefits only to Hindus, and all citizens of India would have to be governed by the largely gender-just Indian Succession Act, 1925, currently applicable only to Christians and Parsis.

Has the Uniform Civil Code in Goa Worked

The only example of a uniform code in India is the Portuguese Civil Procedure Code (1939) of Goa, and it is neither „uniform“ nor gender-just. Marriage laws differ for Catholics and people of other faiths, and if a marriage is solemnized in church, then Church law applies, permitting, for example, arbitrary annulment at the behest of one of the parties. The “customs and usages” of the Hindus of Goa are recognized, including “limited” polygamy for Hindus.

The positive aspect of Goa’s Civil Code is the Community Property Law, which guarantees each spouse 50 per cent of all assets owned and due to be inherited at the time of marriage. However, this provision can be sidestepped in practice, given the power relations in a marriage, and studies show that it has not made any impact on the incidence of domestic violence. Therefore, if gender justice is not prioritized, both uniformity as well as its dilution can reinforce patriarchy and majoritarianism.

Alternative Understanding of the Uniform Civil Code

As opposed to the mainstream understanding of the uniform civil code, where all religious/personal laws are sought to be replaced with a uniform system of laws governing all individuals in order to bring about gender justice in the sphere of personal laws, there is an approach that is advocated by people like Flavia Agnes, where reforms within various religions are sought through judicial intervention. They are of the view that such an intervention is more meaningful to women from minority communities. They argue that this would ensure a „uniform protection of rights“ as opposed to providing a scheme whereby there is uniformity in the law. It is important to note that uniformity in laws by itself will not ensure that there is gender justice, therefore, it is felt by some that it is better to reform personal laws and ensure that laws of all communities are gender-just instead of enacting a law that is uniformly applicable to everybody across different religions. Therefore, the goal should be Uniformity in rights and not uniformity in law. All religious laws are gender unjust, but they aren't gender unjust in the same way. Example, in Hindu Marriage law, there is the system of *kanyadan* where the daughter is “given away” as an essential marriage ritual under section 7 of the Hindu Marriage Act. Hindu women are given dowry and harassed for dowry despite a law prohibiting dowry. Since marriage is considered a sacrament, there is a stigma attached to divorce and women prefer to stay even in a violent marriage than be known as a divorcee. In Muslim law, marriage is a contract and conditions can be incorporated into the contract. *Mehr*, which must be stipulated by the husband as a future security for the wife is more advantageous for women than the dowry system. For Christian women, it was difficult to get a divorce and mutual consent was not a ground for divorce till 2001 whereas, since its inception, Muslim law advocates negotiations and arbitration and a divorce with consent.

Going back to the Goa example, the polygamy in the Portuguese civil code that privileges men over women shows that uniform law by itself does not endure gender justice. And the corollary to this would be that diverse personal laws can be reformed to be made gender just.

Another major reason why personal laws can't be done away with as a whole and be replaced by a common system is the fundamental rights under Articles 25 to 30, which protect religious freedom, education and culture of citizens and which provide the right to people to be governed by the personal laws of the religion that they belong to.

Conclusion

The UCC is something that has been widely debated and what it means itself has been subject to difference in opinion. However, it is important to remember that it is not easy to implement a uniform code applicable to all citizens after having been governed by personal laws of various religions since time immemorial.

The government needs to build trust and faith in people and there should be an amicable atmosphere to discuss this type of sensitive issues. The trust building issues of the Judiciary and the Government will take a long time and since the Government promised for a Uniform Civil Code. There may be a rush for it which may result in disastrous consequences. So alternative solutions, which may satisfy feminists and help BJP in keeping its word, should also be looked and debated upon.

Points to Discuss

- Is it possible to implement a Uniform Civil Code when implementing an absolute Hindu Code (Special Marriage Act and Indian Succession Act) is being almost impossible in India by way of Hindu Marriage Act, Hindu Adoption and Maintenance Act etc.?
- Does the judiciary play a role in all of this and if so are they completely independent?
- Even if it is possible, how will the Modi Government who has been consistently criticized of being communal overcome the criticisms and deliberate over the sensitive issue?
- If any mistakes have been committed by the government, can the Minorities approach the Judiciary whose trust had been faded with controversial observations in cases like the *Sarla Mudgal* case?