

## UNIFORM CIVIL CODE: A NEW CHALLENGE TO SECULAR INDIA

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### **ABSTRACT**

*India is secular in nature with unity in diversity principle as its base. The Constitution of, Article 44 of Directive Principles of State Policy provides for uniform civil code. At the India same time India is large democratic country which has allowed to practice and preach a religion of their choice to the citizens. Above all these humanity, protection of human rights, and protection of the weaker sections of the society is the responsibility of any government. The necessity of UCC lies in the discrimination based on gender in different religions. The deep rooted orthodox and unscientific practices of some religions look down upon the female and that resulted in violation of their rights and freedom. Uniform Civil Code aims at treating every citizen without discriminating on the bases of caste, religion or gender. It is need of the hour for to bring changes to the pitiable conditions of women and the weaker sections in some religions. Obviously, the vested interests like religious heads oppose the same and they believe that it harms the sanctity of their religion. No religion preaches its followers to differentiate, exploit some of its members. Every human soul is the part of that omnipotent and omnipresent God and one cannot illtreat some of his or her fellow beings. This is nothing but ill-treatment of God. In this paper efforts have been made to discuss pros and cons of the implementation and also the challenges the government has to face to enforce UCC with exemplifying the ill practices of personal laws of different religions. The purpose of this paper is to find out the feasibility of the concept in the existing social conditions of India. Is secular nature of our constitution a hindrance or the personal laws of the different religions which are differently defined as compared to the basic principles of any religion.*

**KEYWORDS:** *Sanctity, Vested Interests, Orthodox, Personal Laws, Constituent Assembly, Directive Principles of State Policy, Supreme Court, Disgrace*

### **MEANING**

Uniform Civil Code is common code of civil laws in place of different personal laws of different religions applicable to all citizens of India irrespective of their religion in matters of their personal affairs like marriage, custody, divorce, inheritance and adoption. The purpose of this UCC is to replace the bigoted laws of different religions in India. Obviously the question arises that uniformity of civil laws will disturb the basic structure of any religion or is it an effort to impose the practices of some other religion? The discussion throughout this paper tries to find out the answer for these questions.

### **INTRODUCTION**

India has the beauty of diverse culture, languages, religions and castes. It is evident that every religion has its own specific personal laws which decides the marriage, family, inheritance or succession, divorce, adoption etc. Article 25 and 26 of our

constitution provides for religious freedom and every citizen of India is free to choose, follow, profess and propagate a religion of his own choice. With its secular principle India is not identified in the name of religion. Every religion existing and practiced in India are equally treated by the Government. Then what reason made the government to take the decision to implement Uniform Civil Code? Answer is it is not a new concept created by the [resent government. The proposer of this concept was Dr.B. R. Ambedkar who wanted the same to be incorporated in Indian Constitution. Later on Supreme Court of India often suggested Parliament of India to bring changes in personal laws and to form uniform civil laws so that especially women who are deprived of equal rights with men in matters of marriage, divorce, adoption, inheritance can get just condition of life. Importantly at the time of Shah Banu case verdict the Supreme Court, in the year 1985, opined that it is right time to bring changes to the personal laws. The other one is Sarala Mudgal case in 1995 again the Supreme Court opined about the need of the Uniform Civil Code. The remarks made by the judges of the Supreme Court should make us to think seriously because persons sitting in such responsible positions are not just biased and have definitely studied and referred the personal laws to come to a conclusion in such cases.

For a while let us think keeping ourselves away from any religion and on the bases of humanity and human rights is it humane or just to treat some members of the same community differently and deprive them of same rights as given to the others in the community.

Is it right time to go for replacement of Personal Laws of the religions? Will it not hurt the people emotionally? What are the pros and cons of the implementation of Uniform Civil Code? UCC is to be parallel to Personal Laws or replace them or are they dangerous damage to the personal laws? These are the queries to be answered by the statesmen, academicians and intellectuals.

It is evident from the deteriorated situation of women in all personal laws that the personal laws are to be replaced not paralleled and not even it is foolishness if you codify them.

If you look at the history, British codified all criminal laws without touching the personal laws. The Second Law Commission appointed by British Government recommended for codification of Indian laws related to crimes, evidences, contracts etc except personal laws of Hindus and Muslims. The non- interference of British in the personal laws is the wise decision to avoid hazzles. The same can be interpreted as the wise decision of the British to avoid the consequences. But the British were colonisers who had no concern for the well-being of Indian society.

Post independent Indian Constituent assembly thought that the time is not ripen for UCC. The country had faced the division and blood-shed and the country had socially, economically ruined by the colonial masters. People were not prepared enough to accept and follow Uniform Civil Code.

The post independent India for nearly 60 years did not consider the issue seriously. Supreme Court of India also has mentioned that this is the right time to go for Uniform Civil Code.

Dr. B. R. Ambedkar was one of the staunch upholders of UCC but he could not get it inserted in Constitution. In fact, he had to be satisfied with article 44 in DPSPs. The fact is Directive Principles of State Policies are not justiciable rights. Constitution makers thought that Uniform Civil Code would be the threat to the religious freedom envisaged in the constitution.

Constitution of India provides for religious freedom to Indian Citizens under articles 25 to 28 to follow and profess a religion of their own choice subject to morality, public order and public health. Religious rights are fundamental and not absolute in nature. In the interest of nation can be amended as we could amend Right to Property.

India with vast area and huge population has the diverse nature also. Whenever a Government has to bring drastic changes in some areas of people's life, it will be a great challenge to it as that hurts emotions of people.

## **NEED FOR UCC**

Unity in diversity is the beauty of our land wherein we find linguistic, religious and cultural diversities. Every religion in India has separate personal laws ruled by their respective religions. Personal laws of any religions are at once written by some male religious heads or Sanskrit experts and they are male centric and undermined women. Women in all religions are deprived of their basic rights compared to men in matters of re-marriage, property inheritance, family etc. Constitution of India provides for Equality before law under article 14 of our constitution but then the female is deprived of equal rights in matters of marriage, inheritance and family which are governed by the personal laws of respective religion. It may not be the complete solution for any inter-community problems that India is facing but it gives relief to women of all communities.

UCC is not the reform to bring changes to personal laws of any particular religion rather it is to provide equal social and economic conditions of life to women as well with men in all communities. With the word UCC generally it is assumed that to bring changes to Muslim personal laws. But the real purpose behind this should be to put an end to bigoted laws of all religions. All personal laws are anti women no matter which religion it is.

Since the personal laws of any religion are not treating both men and women on equal line then it would be the saddest and naked truth of humanity. Does any religion teaches its followers to be inhuman and unscientific? The same author has mentioned that the whole personal laws are against the Quran. Polygamy in Muslim religion is another curse for Muslim women. In the name of religion women are treated like animals and their emotions have no value in the family. Triple Talaq was banned in the year 2002 and was opposed by the AIMPLB on the grounds that it is derogatory to the holy Quran. Again in the year 2017 Supreme Court verdict declared it as violative of fundamental rights.

If not now and then never. A firm step is necessary to bring uniformity through the parliamentary act because without legal bindings nothing will be seriously accepted by the vested interests. All India Muslim Personal Law Board did not accept the interference of Supreme Court in the personal affairs of Muslims. They urged to Supreme Court to decide the matters of marriage, divorce and maintenance based on the Shariat.

In the year 2017 The All India Muslim Personal Law Board submitted an affidavit to Supreme Court admitting to bring changes in the Muslim Personal Laws and also they will create awareness about the drawbacks of the triple talaq. Until the government initiation in 2019 the Muslim Personal Law Board did not do anything.

In the year 1986 when Muslim Women Bill was introduced All India Muslim Personal Law Board refused to accommodate indigent women after the iddat period. Moreover it asked the government to exclude Muslim women from the ambit of law.

Hindu Personal Laws are also written at a point of time by the male Sanskrit pandits by sitting somewhere. Obviously the male dominant nature reflected in the Hindu Personal Laws. They also are not lagging behind to look down upon the women. She is denied of property inheritance, remarriage, adoption etc. rights. Property right has been amended and provided a share but no equal when compared to sons. When you look at the life of many women who are separated from men for no serious reasons many of them are not even getting the alimony. When I interacted with such some of the women who are deprived of their right, I felt very sorry for their condition. Who can lend the helping hand for them? If the woman is not economically independent then life for her will be hell. Only the law can do it. Since a woman is entrusted with more responsibilities at home, she also has to be considered for equal right in all matters in the personal laws.

Why there should be discrimination among men and women? Women are also human beings. No man is perfect without woman. Family is complete only with indomitable spirit and contribution of women.

There is another voice claiming that the personal laws are to be left to the respective religions and government has nothing to do with them. State interference in the personal life is denied by some. When you are asking to leave the personal laws for the purview of the respective religion why the miserable condition of women is still continued since long period? The respective religions are asking not to take personal laws in to the ambit of UCC and they are ready to bring changes. Leave apart the pre- independence era, a long time of 73 years of post-independent India has not done any justice to women. In spite of Supreme Court direction, no change has been brought to the personal laws by the religious authorities. If at all the government is concerned with the women and their social and economic justice, no matter which religion they belong to, a firm step to pass UCC is required in the midst of the opposition.

I don't think it is a political gimmick or game. I am not concerned with any political part. As a citizen of this country I expect the government to give us good governance. People's mandate is to be respected through good governance and good governance is not just implementing schemes and reservations to the people.

There are some reasons to the opposition and are like - secular nature of our constitution, Fundamental right to religion articles 25 to 28, personal laws are to be within the purview of concerned religion, and so on.

A citizen of a country who is living within its territory has to obey the laws of the land. The government is to administer according to the provisions of Constitution. Since Indian constitution advocates the equality before law, uniformity of laws should be accepted as constitutional and is to be accepted by every- one who is citizen of this country. One cannot deny to obey the laws of the land. If such religions have denied equal treatment of women, government has to interfere in the interest of protecting the civil life of its citizens.

Let us have look at the articles 25 to 28 – these articles in constitution provides religious rights to every citizen of India but then these rights are subject to morality, public order and public health. Fundamental rights are not absolute. In the name of religion individual dignity and civic life should not be disturbed. Hence if necessary, change should be made in personal laws of any religion existing in India.

Personal laws were left untouched by British because they wanted to continue their Hindu Muslim divisive policy to sustain their colonial power. Later Constitution makers could include UCC only in the Directive Principles of State Policies as the time was not ripen and the country had faced division and blood- shed in the name of Hindu and Muslims. But now the changed modern scenario needs UCC.

Preamble of our constitution enumerates the principle of secularism. A Secular state cannot discriminate any religion and also the nation is not identified in the name of religion. Some argue that UCC is robbing secular nature of our constitution. Uniform Civil Code will promote the real secularism. If the constitution of the country gives equal importance to all religions existing within the country, it also should see that the members of those religions are treated equally or not. The rights of all should be equally protected by the government.

The painful plight of Muslim Women with wrong interpretation of the Muslim Women (Protection of Divorce) Rights Act 1986 and the illogical way of supporting the same by the religious heads is really dangerous to the health and future of community. A staff writer ( the monthly Journal “Islamic Voice” has not mentioned the author’s name but it is mentioned that written by a Staff Writer) of Islamic Voice has referred two cases of divorce – Zahreen Taj and Shamsheem cases (in both the cases women were made to run from post to pillar, finally got justice in the higher court when they were denied justice by the mis interpretation of the 1986 Act. The author is of the opinion that these two cases should open the minds of Muslim Religious and Social Organisations to prevent people from disgracing Islam.

For me the real purpose of Uniform Civil Code is to replace the evil practices and not disturbing the secular nature of the constitution.

The fundamental objective of all religions is same. Mahathma Gandhiji’s opinion about Islam is that- “ Islam’s distinctive contribution to India is it’s unadulterated belief in the Oneness of God and a practical application of truth of the Brotherhood of man for those who have nominally within it’s fold”. Proper knowledge of the fundamentals of any religion is essential to talk about it. About Hinduism Gandhiji is of the opinion that “Hindu Dharma is like a boundless ocean teeming with priceless gems. The deeper you dive the more absolutely proper way to pray”. This is how the religions have one spirit but many forms. But the fanaticism is dividing people on communal bases. The strong belief of religious diversity leading us to ardently stick on to our own age-old personal laws and beliefs as well. The ultimate aim of every religion is same then why not the personal laws of the religions.

Since the Constitution of India enumerates the principle of equality before law it also advocates for not to discriminate based on caste, religion, region, and place of birth, colour and gender. The saddest part of our system is every principle enumerated in our constitution is aiming towards the best society but the exceptions to it are the weaknesses of it. The constitution makers did not completely deny for the Uniform Civil Code but they denied at that point of time based on the existing conditions. Immediately after independence the country might not be in a position to accept the drastic changes in the sensitive matters like religion. In the same way the same Civil laws are not applicable in the modern context. The large democracy of the world is lagging behind in matters of equality and in fact equality is the base for a democratic set up. Hence, I think it is evident that we need to bring uniform civil code.

Gender justice is another reason to be essentially considered as for codification of civil laws. Despite some laws to treat women equally, even now the same miserable condition of women in Indian society is evident by the extreme patriarchal family, polygamy, laws connected with the divorce, adoption, inheritance etc. A woman is also equally eligible to enjoy the rights within the democratic set up. Through UCC women get equal status and is in fact values individual dignity of women in all religions. Women are not objects to be used for the better life of man, better family. They are also to be treated as human beings, as individuals. The identity of a woman should not be with the role she plays in a family as a wife, mother, sister, daughter or daughter in law. Gender in equality is shame on the part of largest democracy of the

world in this modern era. Hence for me UCC is need of the hour to put an end to gender discrimination in the name of religion and also can strengthen the secular fabric.

National integration is another reason to go for UCC. We all say that diversity is the beauty of our nation. Yes. Of Course. I don't say that the religions to be merged. Only the evil practices in all personal laws are to be eliminated. While codifying one thing is to be seriously considered is that the basic structure of any religion should not be disturbed.

If at all UCC is brought, litigations on personal laws would definitely reduce. Justice and equal treatment for both men and women is need of the hour. UCC will definitely promote national spirit among every citizen irrespective of their religion. This would not be the complete solution for communal differences but then the initiation if made by the UCC eventually that leads to emergence of new force and power to face any community based odds. UCC will definitely strengthen the nation.

When we talk about the UCC to all religions practiced in this land, question of imposing UCC on any one religion does not arise when it is trying to eliminate evil practices from all religions and to bring new ones so that the ill treatment of women of any religion arises in matters of marriage registration, funeral, customary practices, rituals etc can be stopped. We are aware of contradictory religions practices in different religions. The feasibility of UCC is to be seriously analysed of course.

## CONCLUSIONS

In the absence of UCC religious prerogative of one community in a secular society has become a contentious issue in India. I would say consensus, debates and discussions are needed to come to a conclusion with compatible provisions of UCC. UCC is needed to eliminate all kinds of subjugations on women and evil practices in all religions. Here there is no question of imposition or compelling. Government of the land has got power to bring changes in the interest of social, economic and personal wellbeing of its citizens. Obviously National interest should prevail over the personal interest. Supreme Court of India has often said that the personal laws are not final. There is need for common law to the nation.

Best practices of all religions, sects, civil laws of developed and international conventions are to be referred and common suitable law for the Indian diverse context is to be framed carefully. The rituals practiced in different religions in matters of marriages and their registration, inheritance, adoption, maintenance etc of course are different in nature and practice. Elimination or change of such practices is definitely going to hurt emotionally. At the same time moral and human values, social and economic justice, individual dignity of every citizen also should be considered in a civilized, modern and democratic country. Eventually it is bounden duty of the government to provide equal and just conditions of life for its citizens irrespective of their religion.

UCC for all communities irrespective of their religious beliefs, social taboos, faith – related codes of conduct, and personal laws has been a long – pending demand.

## REFERENCES

1. *Shambhavi, Uniform Civil Code The Necessity and the Absurdity, Vol No.1, ILJ Law Review, P.No 28, 2017.*
2. *C. K. Mathew, uniform Civil Code the Importance of an Inclusive and Voluntary Approach, The Hindu Centre, Oct,25 2019, 15:09 IST,*

3. Mohd. Shabbir, "Muslim Personal Law, Uniform Civil Code, Judicial Activism : A Critique", XII Aligarh L.J. 1997, p. 47.
4. Zafar Ahmad, *Personal Laws and Constitution of India : A Study in Contemporary Perspective with Special Reference to Dr. B.R. Ambedkar*, p. 30 (unpublished, 1992). 3. Mohd. Shabbir, "Muslim Personal Law, Uniform Civil
5. *Constituent Assembly Debates, Vol. VII*, p. 543. 544,546
6. M.S. Deshpande, *Light of India or Messages of Mahathma Gandhiji*, Comprehensive Website by Gandhian Institutions – Bombay Sarvodaya Mandal and Gandhi Research Foundation, <http://www.mkgandhi.org/religionmk.htm>
7. Chairman and Members, Law Commission of India, *A Consultation Paper on Reform of Family Law*, Ministry of Law, Government of India, Aug. 31st 2018, URL [www.lawcommissionofindia.nic.in/reports/CPonReformFamily](http://www.lawcommissionofindia.nic.in/reports/CPonReformFamily).
8. Chairman and Members, Law Commission of India, *A Consultation Paper on Reform of Family Law*, Ministry of Law, Government of India, Aug. 31st 2018, URL [www.lawcommissionofindia.nic.in/reports/CPonReformFamily](http://www.lawcommissionofindia.nic.in/reports/CPonReformFamily).
9. Tanushree, *Uniform Civil Code in India; An Analysis, Vol-2, Issue-9, Journal of Contemporary Issues of Law*, Page No 28. 2016.
10. K.K.Ghai, *Indian Government and Politics, P.No-142, 20th Revised Edition*, Kalyani Publishers, 2002.
11. Durga Das Basu, *Introduction to the Constitution of India, P.No 20&21, 19th Edition Reprint*, Wadhwa and Company Law Publishers, 2005.
12. A Staff Writer, *Muslim Women and the Law, Vol- 14 – 7, Islamic Voice Online (Monthly Journal)*, Page 03, July 2000.
13. Munawwar Haque, *Why A Uniform Civil Code is not what India Needs Immediately*, Daily O – Open to the Opinion, Dec. 16 2019, <http://www.dailyo.in/triple-talaq-uniform-civil-code-supreme-court-narendra-modi/story/1/20663/html>.
14. *Secular Civil Code: Divided We Stand, Time of India*, INN/ Sep.4,2017, 08:55 IST, <http://timesofindia.indiatimes.com/india/secular-civil-code-divided-we-stand/articleshow/60355993.cms>
15. Krati Sachdeva, *Uniform Civil Code, Law Articles in India*, Legal Service India.com, 2016
16. Chari, Sheshadri, "Modi Government has been working for a Uniform Civil Code and we didn't even notice Until now", The print retrieved 22nd August, <https://theprint.in/opinion/modi-govt-has-been-working-for-a-uniform-civil-code-and-we-didnt-even-notice-until-now/278053/>
17. <https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068>.
18. <https://www.thehindu.com/news/national/ambedkar-favoured-common-civil-code/article7934565.ece>

19. Som, Reba (1 February 1994). "Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?". *Modern Asian Studies*. Cambridge University Press. 28 (1): 165–194. <https://www.cambridge.org/core/journals/modern-asian-studies/article/abs/jawaharlal-nehru-and-the-hindu-code-a-victory-of-symbol-over-substance/520E13D91A19C4603271F7A457924D19>
20. "How Muslim fears were allayed, and the UCC became a directive principle". Archived from the original on 11 September 2017. Retrieved 13 September 2017.
21. UtkalAnand, *Uniform Civil Code : There's Total Confusion, why can't it be done, SC asks Govt.* <https://indianexpress.com/article/india/india-news-india/uniform-civil-code-supreme-court-asks-govt-hycant-it-be-done-tell-us-your-plan/>
22. *The Constitution of India, Right to Freedom of religion, Article 25(PDF)*, 21st June, 2014.
23. India Legal Bureau, *Uniform Civil Code: Another nail in the coffin to satisfy the façade of party manifesto.* <https://www.indialegallive.com/top-news-of-the-day/news/uniform-civil-code-another-nail-in-the-coffin-to-satisfy-the-facade-of-party-manifesto/>
24. Kevin Boyle, Juliet Sheen, "Freedom of religion and Belief: A World Report", Routledge, 2013.
25. " Muslim Intellectuals Proposes a Revolutionary Uniform Civil Code " *The Statesman*, <https://www.thestatesman.com/india/muslim-intellectual-proposes-a-revolutionary-uniform-civil-code-1480508995.html>