

**DE JURE NEXUS LAW JOURNAL**

Author:

Cherie Dharmani

Jitendra Chauhan College of Law

2<sup>nd</sup> Year, LL.B.**AN ANALYSIS ON THE NEED FOR UCC IN INDIA.****ABSTRACT**

*To debate onto whether or not should UCC be implemented, it is necessary to have an idea as to what UCC is. Uniform Civil Code are a set of laws that govern personal matters for all its citizens, irrespective of what religion they belong to UCC is a bill that has been proposed in India which shall replace all the personal laws with a set of common laws that shall be applicable to all. The UCC is said to cover all the public laws and laws that relate to marriage, divorce, inheritance, adoption, and maintenance.*

*The ongoing debate as to whether or not should UCC be implemented has been a major issue in the 21st Century. The reason being India is a diverse country and hence, there are several groups of people that follow various religions implementing UCC shall require all of them to give up on their personal laws, which might spark an issue. Women's rights is another important factor that is to be considered.*

*The main idea behind implementing Article 44 of the India Constitution is that implementing UCC shall strengthen the core of the country by bringing in unity and integrity, as the country shall then reject all personal laws of different communities and there will be implementation of Gender Equality and equality among religious groups too.*

*In India, Goa is the only state where UCC has been made applicable. The Goa Family Law is nothing but a set of civil laws that govern the residents of Goa and Damon, irrespective of their religion and ethnicity.*

## **INTRODUCTION**

The inequalities prevailing in the society, be it between two sexes or between people from different religions, has flared up the need for having UCC in India in order to protect every citizen rights. Article 44 of the Indian Constitution which states that the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India, is what is the urgent need of the hour. Personal laws, such as Hindu Personal laws or Muslim Personal laws, are civil laws that have provisions which deal with matters such as marriage, divorce, custody, adoption, inheritance etc. The reason for not implementing UCC in the country, even after Article 44 clearly states for its need is because, Article 44 falls under “Directive Principles of State Policy”, which means that the idea of implementing Uniform Civil Code, which is suggested by the Indian Constitution, is solely a goal, which the country should try to achieve and not a fundamental right or a Constitutional guarantee.

Directive Principles are defined in Article 37, which lays down:

*“The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”<sup>1</sup>*

As was laid down in the Shah Bano Case by the apex court,

*“There is no evidence of any official activity for framing a common civil code for the country. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.”<sup>2</sup>*

## **HISTORICAL BACKGROUND**

The British Government formulated the ‘Second Law Commission’, which back in 1835 submitted its report whereby it stressed on the fact that why was there an urgent need to implement Uniform Civil Code, back then. It stressed on the need for uniformity in codification of several Indian laws that solely related to crimes, evidences, contracts, etc however, it was specially made to recommend that personal laws of Hindus and Muslims should be kept outside such codification.

---

<sup>1</sup> Article 37, The Constitution of India.

<sup>2</sup> Mohammad Ahmed Khan vs. Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844.

*"In their Second Report the Commission examined the problems of Lex Loci and codification and came to the conclusion that 'what India wants is a body of substantive civil law, in preparing which the law of England should be used as the basis, but which, once enacted, should be the law of India on the subject it embraced. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and character, religions, usages of the population, would, we are convinced, be of great importance to that country.' The Commission also recommended that codification should not extend to matters like the personal laws of the Hindus and Mohammedans which derived their authority from their respective religions."*<sup>3</sup>

The Report was made by the informed views of J.H. Harington, who was a member of the Viceroy's Council, Bengal. He presented his arguments against generally applying the English (British) Laws to the citizens of India on the basis of three grounds.

Grounds being:

- 1) That individuals here, had fixed set of habits, manners, established local customs, and prejudices which were on a totally different range when compared with the principles or even practices of England.
- 2) The people here were 'ignorant' of the language and the way in which the stated laws were written and presented, and thus, would fail to acquaint themselves with the knowledge of *"our complex, though excellent, system of municipal law."*
- 3) The laws of England could not be applied in India, as they were only *"suitable to the genius of the people and all the circumstances in which they may be placed"*.<sup>4</sup>

The goal behind taking the decision via the above stated 1835 Report was to bring about separation between the various personal laws that were different for every religion and community of India and to keep it out of proposed codification.

Later, in 1858 during the 'Queen Victoria's Proclamation', which was when the British government took over the 'sovereign power' of India's administration once after displaced the East India Company in the year 1857, during the revolt, and promised absolute 'non-interference' in all sorts of religious matters.

---

<sup>3</sup> Law Commission of India. 1958. Fourteenth Report (Reform of Judicial Administration), Ministry of Law, Government of India, September 26, Vol. 1.  
<http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>

<sup>4</sup> Banerjee, A. C. 1984. English Law in India, Abhinav Publications, pp. 133.  
<https://books.google.co.in/books?id=7MXExXXb9usC&pg=PA134&hl=en#v=onepage&q&f=false>.

*"We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the Religious Belief or Worship of any of Our subjects, on pain of Our highest Displeasure."<sup>5</sup>*

This statement clearly meant the separation of the two arenas of law.

The public sphere which shall be governed by the British and Anglo-Indian laws, being: crime, land relations, contract laws and evidence laws, which applied equally to every citizen, irrespective of what religion they were from; and the personal laws of the people, which governed matters of inheritance, succession, marriage, and religious ceremonies and so on.

### **NEED FOR UNIFORM CIVIL CODE**

India is and has always been a diverse country. With the long legal history of the country, the oldest of them all are the personal laws, the Hindu and the Muslim personal laws. The country today is split up in the name of religion, sections and even sexes due to each having a different personal law that govern various personal matters such as marriages, divorce, maintenance, inheritance etc.

The multifarious castes, classes, religions and creeds have their own set of beliefs and practices, that they follow, which causes confusion in the legal implementation of laws under certain circumstance. Whether or not India needs the Uniform Civil Code is a question that has been debated for long now, but in my opinion, looking at the country today, it is high time that Uniform Civil Codes are implemented. It would be wrong to compare India with a country that has implemented UCC, because the situation in India is quit complex in comparison to other countries, but this does not stand as an excuse to not implement the same. India is a country where personal laws have been prevailing for years now and hence, giving them up so easily would not be possible, for which there is a need to have an agreement among all the different religious communities to unanimously agree to give up their personal laws, and accept uniform civil code.

One way to look at it is that, personal laws govern people belonging to a particular faith whereas, uniform civil code puts every individual on the same footing irrespective of what religion they belong to, hence putting an end to the various personals laws that govern personal matters.

If one traces personal laws, they go back to the 17th century, based on which several other enactments have been made, but none of them brought about equality between people belonging to different religions. Implementing uniform civil code shall be long-term and shall bring about equality in the

---

<sup>5</sup> Wolff, J. 1997. Religion in Victorian Britain: Culture and Empire, Manchester University Press, pp. 123.

The full text of the Proclamation by the Queen in Council to the Princes, Chiefs and people of India (published by the Governor-General at Allahabad, November 1st 1858).

<https://www.bl.uk/collection-items/proclamation-by-the-queen-in-council-to-the-princes-chiefs-and-people-of-india>

society amongst different religions. Uniform Civil Code shall also help bring about gender equity in the society, giving women equal rights as the men, that they deserve. It is always argued by the religious communities that UCC disturbs, rather disrupts their personal laws, and that it affects their religious freedom, but when one looks at the bigger picture, they realise, that it is for the good of the society at large.

The campaign to implement the Uniform Civil Code and uniting the personal laws, has been on for quite long now, and it is only justified and should be supported by everyone who call themselves progressive thinking Indians solely because of the fact that the country needs it today. Goa is the only Indian State which has enforced the Uniform Civil Code for all citizens, irrespective of what class, caste, colour, creed or religion they belong to. It was first brought in with The 'Portuguese Civil Code', which was introduced in the 19th Century in Goa and it has been in force since then and was never replaced. Implementation of the Uniform Civil Code in Goa was a progressive step taken towards ensuring that there is equity in the state, with equal pays, and other equal rights, irrespective of the gender or even religion. It was only after the implementation of the Uniform Civil Code that every birth, death, marriage, inheritance act fell under the purview of the same laws and had to be compulsorily registered. Even if one talked about divorce, there were different laws for Hindus and Muslims but now they were all the same and that, Muslims that have registered their marriages in Goa are not allowed to marry more than once and take divorce by pronouncing the words, 'talaq' thrice.

As under the Uniform Civil Code, every and any property, and wealth acquired by the couple during their course of marriage shall be commonly owned by them, that is by each spouse, and in case of a divorce each spouse shall be entitled and eligible to hold half share in the property, and on the death of either spouse, the other half is to be vested or retained by the living spouse. Uniform Civil Code also makes provision for children, be it male or female and state that if two get married and leave their house, the parents shall not be eligible to disinherit the children totally, rather they will have to give a share to the children. This means that one half can be disposed off by them via a will and the other has to be necessarily given to every child equally.

The urgent need for implementing uniform civil code has been expressed by several justices in several cases, one of them being by **Justice Kuldip Singh** who states that Article 44 has to be put into action.

The Hon'ble Justice, by referring to the codification of the Hindu personal laws held that,

*"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."*

**Chief Justice Khare** has also pointed out 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.”*

The biggest obstacle that the country would face when wanting to implement the Uniform Civil Code shall be drafting the same. Getting everyone to agree unanimously towards implementing the laws is difficult too, but drafting is the major issue as, one would not know whether blend all the ‘goods’ of personal laws or to create an entirely new law as per the provisions of the Indian Constitution. Theoretically there are several views on how one should go about with it, but practically there is nothing one could refer as a “model law for uniform civil code”

The main idea behind implementing Uniform Civil Code is that it should strike a balance between protecting fundamental rights and religious sentiments of individuals. The laws should be such, which are just and proper as per a man of ordinary prudence, without any bias with regards to religious or political considerations.

The most recent belief, dated: August 19th, 2019, of the Rashtriya Swayamsevak Sangh (RSS), Seshadri Chari, set the grounds for the BJP government to bring UCC back on the stand of the revocation of Article 370.

*“The Uniform Civil Code (UCC) was part of the BJP manifesto and had been of the Jan Sangh’s manifesto too. The RSS has also been claiming it. In fact, the UCC and abrogation of Article 370 have been the longest-standing demands of the Jan Sangh right from its formation. The only addition in the BJP manifesto is Ram Janmabhoomi.”<sup>6</sup>*

History has proven that all the attempts to bring in codified personal laws have only resulted in protests. The Hindu Code Bill, which was one of the foremost items of the social legislation, have triggered a good number of opposition. The debate on Uniform Civil Code focuses mainly, rather solely, on the argument as to whether or not to replace individual personal laws, that are made on the basis of their prevailing customs and practices of marriage, divorce, adoption and inheritance with a common code. The ones who agree with such transition argue that this change shall bring an end to all the inequalities and discrimination. While the other half, contends that it will ‘rob’ the country of

---

<sup>6</sup> Nair, P. 2019, It's Time For Uniform Civil Code. This Will Help Muslims Break Taboos: Seshadri Chari, Outlook, August 29.

<https://www.outlookindia.com/magazine/story/india-news-its-time-for-uniform-civil-code-this-will-help-muslims-break-taboos-seshadri-chari/302081>.

its religious diversity, which India has always been, and also that it shall violate the fundamental right to practice any religion which the very Indian Constitution gives to every citizen via Article 25.

## **PROS AND CONS OF IMPLEMENTING UNIFORM CIVIL CODE**

### **Pros of Uniform Civil Code:**

- Providing equal status and avoiding discrimination amongst all the citizens of India, irrespective of what their religion, class, caste, gender, colour or creed is.
- Promoting gender equality, as implementing uniform civil code shall bring both men and women at par.
- Accommodating the budding aspiring youth of the country and to fully utilise their full potential towards nation-building.
- To place all Indian citizens at equal footing before the court of law. In India all the criminal and the civil laws provide equality in the courts, it is only the personal laws that lag behind, and thus, uniform civil code shall be the push that those laws need.
- To bring about uniformity and codification in laws that relate to personal matters as inheritance, divorce, marriage etc .

### **Cons of Uniform Civil Code:**

- India, as is well known, is an immensely diverse country, and this makes it tough to come up with laws that are common and uniform, and that which satisfy all the sets of people in the country. Apart from getting an unanimous consensus, drafting is yet another issue that the country faces.
- India has not just various religions but also has several communities, and these communities, mainly minority communities hesitate to let Uniform Civil Code's implementation as it serves as a threat to their rights related to religious freedom.
- Personal matters as marriage, divorce, inheritance etc are preferred by a majority of people to be left alone and not be interfered by the state, as the constitution provides for right to freedom of religion which one shall be not interfered with. Implementation of the code will bring about uniform rules and its implementation will reduce the scope of ones freedom of religion.
- Brining uniform civil code shall be a sensitive issue and tough task to implement but not impossible.

## CASE STUDIES

There have been several cases that put light on why is UCC the need of the hour. The cases being:

- 1) **Mohammad Ahmed Khan vs. Shah Bano Begum**<sup>7</sup>: In this particular case Shah Bano Begum, in 1985, approached the Supreme Court of India in order to seek maintenance from her husband Ahmed, who after 40 years of their marriage divorced her under the triple talaq system and hence, defined her maintenance, apart from the one that the Islamic Laws required him to give. Shah Bano claimed maintenance under Section 125 of the Code of Criminal Procedure (hereafter referred to as Cr.P.C.)

In its judgement, the Supreme Court stated that Section 125 of the Cr.P.C. was applicable to all its citizens, irrespective of what religion they belonged to and hence, the contentions of Ahmed to not pay maintenance cannot be entertained. The Supreme Court also stated that, in such scenarios UCC would help as it would remove the confusion created by different personal laws.

- 2) **Smt. Sarla Mudgal Vs. Union Of India**<sup>8</sup>: This is another Supreme Court case where the Court in its judgement stated how important it was to implement Uniform Civil Code in the country. The issue to be addressed in this case was whether a Hindu husband, who got married as per the Hindu Marriage Act, 1955, could get remarried to another woman by the two converting into Islam, without divorcing his first wife, who continued to remain Hindu.

The court held that the latter marriage shall be held invalid as converting into Islam just to solemnise a second marriage is an abuse of the personal laws. Such a marriage shall not be considered valid and shall also be an offence under Section 494 of the Indian Penal Code.

- 3) **John Vallamattom and Another vs. Union of India**<sup>9</sup>: Yet another case that showed why it is important to have UCC in the country. This is a writ petition case, filed by John, who stated that Section 118 of the Indian Succession Act was biased against Christians as it imposed restrictions on donation of property for charitable and religious purposes via a will. In the court's judgement, it was held that the said section was unconstitutional and hence, it was struck down.

The above stated cases are only a few that showed why UCC was the need of the hour, there have been several other cases that show the same too.

---

<sup>7</sup> Mohammad Ahmed Khan vs. Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844.

<sup>8</sup> Smt. Sarla Mudgal Vs. Union Of India, 1995 AIR 1531, 1995 SCC (3) 635.

<sup>9</sup> John Vallamattom and Another vs. Union of India, Writ Petition (Civil) 242 of 1997.

**4) Danial Latifi & Anr v. Union Of India<sup>10</sup>**

It was in this case where the Muslim Women's Act (MWA) was challenged on the grounds that it was violative of Article 14 and Article 15 of the Indian Constitution which stated the Right to Equality and also, Article 21, which laid down the Right to Life. The Supreme Court after thoroughly analysing the facts of the case held the law to be constitutional, and harmonised it with section 125 of the Criminal Procedure Code and stated that the amount received by a wife during her iddat. Hence, under the law of the land, it was laid down that a divorced Muslim woman shall be entitled to the provision of maintenance for a lifetime or until she has remarried.



## **IMPORTANCE AND BENEFITS OF IMPLEMENTING UNIFORM CIVIL CODE**

### **Importance:**

'Secularism' which means "separation of religion from civic affairs and the state.." was added in the Indian Constitution after the 42nd Amendment. The inclusion of this very word states that India needs to have Uniform Civil Code in order to have common set of laws for all the citizens of the country and present 'equality' that is mentioned in Article 14 of the Indian Constitution.

Implementation of UCC shall not only be a huge step towards the progress of the country but shall also help to resolve the issues against discrimination that women face on religious grounds. It shall also bring about unity in the country and reform the social system all-together.

UCC mainly focuses on implementing common laws that majorly relate to provisions that personal laws deal in. Hence, replacing personal laws with UCC shall create a common ground for all the cases that fall under marriage, divorce, maintenance and succession and hence, there shall be no discrimination whatsoever.

### **Benefits:**

- 1) Equality: Implementing UCC shall help bring about equality to all irrespective of what religion they belong to.

---

<sup>10</sup> Danial Latifi & Anr v. Union Of India, Writ Petition (civil) 868 of 1986.

- 2) Equality, as stated above, shall not only be brought about for people in general belonging to different religions, but also between man and women.
- 3) Discrimination exists in the society in some form or the other and hence, to avoid it, bringing every citizen under the same set of laws is very important as it would leave no scope for any sort of discrimination.
- 4) Personal laws that exist today favour the 'upper-class' section of the society and hence, to give equal status to all implementing UCC is the best way that shall bring every member of the society, irrespective of what class they belong to, under the same laws.

## **CONCLUSION**

Uniform Civil Code if implemented shall bring about a huge difference in the society and shall be a huge step towards progress. In my opinion, discrimination and inequality does exist in our society, and to fight those and to bring about equality, UCC is the best way out. It is an ideal way to give citizens their fundamental rights and to bring about the 'equality' and 'secularism' that is stated in the Indian Constitution. That part of the society which is against the implementation of the uniform civil code contends that in ideal times and only in an ideal State, such code would be "the ideal safeguard of citizens rights", but India has not moved much further from what was it was back when the Indian Constitution was written, 50 years ago. Just how Criminal Procedure Code applies to all irrespective of what religion or class one belongs to, similarly, it is high time we now have the same for personal laws as well, because discrimination faced in cases of marriage, divorce, inheritance and succession is at its peak, and its high time it is controlled and there is equality brought within.