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## UNIFORM CIVIL CODE FOR THE CITIZENS

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Vaishnavi Suresh, Presidency University, Bengaluru

### ABSTRACT

The Indian Constitution was enforced in the year 1950's with an aim to make the lands of India suitable for all its citizens where individual liberty and public harmony are preserved. This is where the existence and conflicts between the directive principles of the state policy and fundamental rights happens. The ultimate objective of both the factors is to liberate the powers equally among the citizens for their betterment of lives. The directive principles of the state were formulated with the objective of achieving its benefits over the passage of time. It was also believed that directives will be proved supplementary to the state as a Sovereign, Socialist, and Secular Democratic Republic. But, as per the lapse of time, the directives proved to stand against the fundamental rights of an individual. The principles which are adopted to benefit the whole of a society may stand against the rights and freedom of an individual or a particular community.

The Directive Principles of State Policy are determined in the Articles 36-51 of the Indian Constitution. In this article, the author focuses on Article 44 which speaks about the Uniform Civil Code for all the citizens in India. It is regarded as a debatable yet a controversial one as the directly clashes with the personal laws, religious sentiments and other factors claimed to be the fundamental rights.

## INTRODUCTION

The Directive Principles were influenced from the Irish Constitution and the Indian constitution makers borrowed this concept from Irish Constitution in 1937. The main objective behind formulating Directive Principles is that of creating a welfare state. Rather than holding upon a political democracy, the inclusion of Directive Principles in the State will lead to establish a social and economic democracy. Part VI of Indian Constitution, Articles 36-51 consists of all the Directive Principles of the State Policy.

Article 44 speaks about one of the major directives of the state; which is the Uniform Civil Code.

A Uniform Civil Code (UCC) means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly.<sup>1</sup> UCC will be applicable to all the citizens despite their cast, religion, gender, and dominance in the country in all matters like family laws, marriage and divorce laws, inheritance adoption and in much more related cases.

## UNIFORM CIVIL CODE

Part IV of Article 44 of Indian Constitution states that, 'The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India'.<sup>2</sup>

Article 44 is one of the principles from Directives. These are defined in Article 37 as non-judicable, which means that it is not enforceable by the law, the principles laid down are fundamental in governance.

## BACKGROUND

The East India Company during 1757-1875, had done adequate efforts in the reformation of certain religious practices like Sati and passed the Bengal Sati Regulations Act of 1829, which was later spread to all the English territories in India.

During British Era, the government in 1835 was confirming the need of UCC in Indian law involving crimes, evidences, contract etc. However, the personal laws relating to Hindus and

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<sup>1</sup> <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/> (last visited 20<sup>th</sup> July, 2021).

<sup>2</sup> INDIA CONST. art. 44

Muslims were suggested to keep outside the uniform codification. In the later end of the British Rule, forced the government to form the BN Rau Committee where the codification of Hindu Laws were applied in 1941.

After independence, the first Prime Minister, Jawaharlal Nehru, Dr. BR Ambedkar, and some of his fellow members and women members wanted to have a uniform civil code to be implemented. Based on the previous recommendations, in 1956, a bill was adopted where the Hindu Succession Act were to be amended and codified the law spreading among Hindus, Buddhists, Jain sans Sikhs. Personal Laws for Muslims, Christians and Parsis were formulated separately.

Due to various oppositions from the fundamentalists and due to the lack of awareness in implementing such a uniform code, certain reforms were made in the Hindu Code Bill the Successions Act, the Hindu Marriage Act and certain other reforms.

Special Marriage Act in 1956 were also implemented for civil marriages who wished to wed outside the boundaries of their particular personal laws.

## **IMPLICATIONS OF UCC**

1. The main of the formulation of UCC is to provide protection the vulnerable sections of the society. As envisaged by Ambedkar, a secular democratic nation should have a common laws and personal laws distributed uniformly without any distinctions in their religion, caste, gender etc.
2. Uniform Civil Code helps in the simplification of complex laws in marriage, succession, adoption which vary for certain religious laws like Muslim laws or Hindu Laws into one simpler law and code. Hence, formulation of UCC will help in neutralising the complexity prevailing in these religious laws to one simple civil law.
3. UCC formulation will help in reducing religious vote bank politics as every political party indulge in inflicting certain religious riots among the society in the name of personal laws.
4. Formulation of UCC will be one of the greatest steps in secularising Indian society. Rather than being bound by the religious practices, the laws will be equally formulated for all the citizens ideally

5. Separate sets of personal laws can bring gender bias among the citizens. Formulation of UCC can avoid such gender biases and provide equality among men and women before society and law. The practice of triple talaq is the classic example of gender bias which exists as per the Muslim Laws. Formulation of UCC can help in avoidance of such practices and provide equality.
6. Every personal laws constitutes a loophole within them which still forces the Indian judiciary to lay back into the ancient values and believes jeopardising the progressive believes and becoming a truly developed nation.
7. UCC helps in shaping the factors like equality, humanity, and modernity, where the younger population, despite their gender or religion or caste of income status, can contribute equally towards nation building.

## **CHALLENGES TO UCC**

1. The practical implication of UCC itself causes havoc among the communities in India as different religious groups have different personal laws. Unifying such varied laws to a common civil code will lead in the shrinking of loopholes within the personal laws. Such a disadvantage will not be tolerated by the religious groups in India.
2. UCC implementation will cause a misconception in the minds of people that it is a methodology chosen by the government to impose the majority views and believes on them.
3. India known as a Hindu state is one of the major cause of the Secular disputes in the nations. UCC guidelines will again increase the inflicted mindset of people as it is a way to impose Hinduism in the whole country, neglecting our religious believes.
4. For example, even after bringing amendment to the Succession Act on September, 2005, no specific changes have been made in favor of women as their percentage of property that could be held by them still remains the same. Similarly, implementation of UCC aims on increasing the status of women, in practical sense, it's not that easier to happen to the misogyny still prevailing in the society.
5. Even after UCC will be implemented all over the country, the political parties, for their own selfish needs, will keep on inflicting the religious sentiments in the minds of people. Such practices, instead of neutralising the complexity of religious

personal laws, the religious sentiments still exists which is one of the disadvantage for the courts to independently function on these matters.

6. A hurdle between the Articles 25 and 14 of Indian Constitution.

## UNIFORM CIVIL CODE IN GOA

Goa is the only Indian state where the Uniform Civil Code are implemented and followed from the year 2018. Earlier on , before the amendment, the Portuguese Civil Code introduced in 19<sup>th</sup> century were still followed and were not replaced after India annexed Goa. “Goa is a shining example of an Indian state which has a Uniform Civil Code applicable to all regardless of religion”<sup>3</sup> commented Supreme Court after the implementation of UCC in Goa.

Amendments made:

1. Marriages were made compulsory under the UCC in Goa as any disputes arise in the name of marriages can be resolved legally.
2. UCC in Goa allows for the prenuptial agreement where distribution of assets and wealth can be altered.
3. Muslim marriages registered in Goa cannot practice polygamy or triple talaq.
4. During the course of marriage, the properties and wealth are equally divided among the spouses.
5. Each of the spouses are entitles half of the property at the time of divorce and property id divided equally among the surviving partners in case of death of the spouses.
6. The properties of the ancestors are distributed equally among the heirs and no distinction is made in this respect.

Despite all these reforms made in the Goan codes, there is a lack of equality and justice in certain respective.

1. Article 1057: provides compulsory registration of marriage. This lacks uniformity between Catholic and non-Catholic marriages<sup>4</sup>. There is a double confirmation with signatures required by the couples indenting to get married. The first is the recording of marriage by the would-be spouses in front of the civil registration authorities and the

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<sup>3</sup> <https://indianexpress.com/article/opinion/columns/uniform-civil-code-supreme-court-article-44-6004340/> )last visited 20<sup>th</sup> July, 2021)

<sup>4</sup> Id at 3.

marriage deed is signed after two weeks. Catholic marriages are considered to be completed when the signatures are recorded in churches for civil registrations. In this case, the confusion arises and there after disputes over the same and marriage proves to be invalid.

2. There proves to be two different annulments of marriage procedures for Christian marriages and non-Christian marriages. Article 1089 allows ecclesiastical courts to nullify Catholic marriages while for non-Christians, it can be exercised only in civil courts.
3. Article 1204 permits the husband to get a divorce if adultery is committed by the wife, but the wife can get a separation only if the husband commits adultery with public scandal, and a divorce if he keeps a mistress in the conjugal home or abandons her.<sup>5</sup>
4. In case of prenuptial contracts, the Article 1104 states that the wife is not entitled to deprive the husband by way of ante-nuptial contracts from the administration of assets. She may, however, reserve for herself the right to receive part of income from her assets for pocket expenses provided it does not exceed one-third of the net income. Of course, there is joint ownership, and the husband cannot sell assets without the wife's consent.<sup>6</sup>

If we analyze the above stated, it's very clear that, for a country like India where there is an existence of number of religions, it is quite impossible to carry out a 100% Uniform Civil Codes. The existence of such codes comes along with the lack of equality and justice within them.

## CASE LAWS

### **Mohd. Ahmed Khan v. Shah Bano Begum [1985 SCR 844 1985 SCC 556 = AIR 1985 SC 945]**

In this case, a 73-old year women was divorced by her husband using triple talaq and was denied of maintenance. The District Court and the High Court ruled in her favour which led her husband to appeal in Supreme Court says that he had fulfilled all the necessary compliances as per the Muslim Law. Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days ). While Section 125 of CrPC says that

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<sup>5</sup> Id at 3

<sup>6</sup> Id at 3

applied to all citizens, maintenance has to be provided to his wife. In these references, the Supreme court held in favour of Shah Bano Begam.

It was considered to be a historic judgment. Nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection on divorce ) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.<sup>7</sup>

### **Latifi v. Union Of India [2001 SC SCC 740]**

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14& 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

### **John Vallamattom And Anr vs Union Of India(Writ Petition (civil) 242 of 1997)**

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr Vallamatton contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional.

## **CONCLUSION AND ANALYSIS**

The main objective behind the Article 44 of Indian Constitution is to bring all the communities and religious groups under one platform where they are guided by one single code. But such attempts of the state are regularly hindered by the religious sentiments and by communal politics.

In order to understand the wide scope and the benefits of UCC, a progressive and broadminded attitude is necessary which is currently lagged behind by the Indian community. This can be achieved only when the citizens are educated as an individual as well as in the community

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<sup>7</sup> <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/> (last visited 20<sup>th</sup> July, 2021).

groups so that the objectives can be taken in their real sense. UCC adoption must be taken in the manner where all the interests of the religion are kept their best sense. When the communities are educated properly on what UCC means, a gradual initiative will be developed from such communities itself. In such cases, the religious sentiments are also equally valued.

Even though the adoption of UCC can prove to be something disastrous, the way to avoid is not the complete eradication of UCC guidelines. Even though UCC proves to be a hindrance in exercising one's fundamental rights, it is also essential to look give preference to a harmonious and a welfare state. While protecting one's fundamental right, it may lead to the violation of the fundamental right of the other which again leads to the disputes within the society. The Indian motto of 'one citizen one law' may not be possible in a democratic country like India where numerous religions seem to exist. The issue aroused out of the UCC formulation in Goa is the best example to it. But as stated earlier, when the religious groups are properly educated and when the political parties act selflessly towards the betterment of nation, the UCC guidelines can be very well established in India.