

# Uniform civil code: a progressive step

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## Abstract

The need of Uniform Civil Code in India has risen again after 70 years of Independence. This is only because India needs such type of codes to handle to current scenario. The government should enforce Uniform Civil Code which is a set of civil rules for the citizens of all caste, colour, creed, gender, religion etc. The adoption of Uniform Civil Code in India is yet a controversial issue today. If Uniform Civil Code comes into being, this will definitely lead India to its progressive glory. The laws in the Code will look towards the civil rights of an individual like property, inheritance, adoption, marriage, succession and divorce which till today was governed by the personal laws. Article 44 of Indian Constitution states the provision of Uniform Civil Code but in Directive Principles of State Policy which cannot be enforced by law and it totally on the discretion of State to enforce for the welfare of the citizens. One of the implications of Uniform Civil Code is for the secularism in India. The researcher in the paper tries to figure out all the necessary points for the enforcement of Uniform Civil Code with some judicial interventions with a complete doctrinal research method.

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## **Introduction**

The question whether to adopt Uniform Civil Code in India or not has always been an important topic of debate throughout the years from the day India has got its independence. As India is made up of different colours and spices, it has always been an issue of adopting this Code permanently in the country for the benefit of the citizens as to make the country a secular one and diminishing all the religion's personal laws surviving in the country. In India, as there is a common criminal code i.e., The Indian Penal Code, 1860; which is applicable to every citizen of India irrespective of caste, colour, creed, religion, gender and place of birth; we lack behind in the similar code in civil matters of divorce, adoption, marriage and succession which are still managed by the personal laws. As all the different personal laws are governed by different scriptures, cultures, sources, philosophies and customs; it is difficult to bring all of them under a single umbrella.

Uniform Civil Code in India means to replace the personal laws of different religions exhibiting in India that follow their own scriptures and customs with a common set of law governing every citizen of the country. This issue has risen in the Indian political sphere recently because many Muslim women have been severely affected by their personal laws and have been continuously asking for the justice from Supreme Court of India to uphold their Fundamental Rights of equality and liberty. This made the Law Commission to examine on the matters for the implementation of the Uniform Civil code in the country; this was asked by the Union Law Ministry of India. The Constitution of India, 1950 itself has the provision of Uniform Civil Code in Part IV; the Directive Principles of State Policy in Article 44 which clearly states:

“The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”

Though B. R. Ambedkar, the chairman of drafting committee of the constituent Assembly was a staunch supporter of Uniform Civil Code but he couldn't include in the Basic Structure of the Constitution but only made through the Directive Principles of State Policy because of the oppositions. Thus, it gives directives to the States to fulfil this task and till date no significant steps has been taken in this regard. Uniform Civil Code is a mandate upon the State under article 44 of the Indian Constitution and it is same for all the caste, religion and tribe and supersedes all the personal laws existing in the country. Still, Goa is the only state in India that has followed up the mandate and has implemented the Uniform Civil Code in its small state. There is no discrimination among the residents of this State as due to this Code all

people i.e., Hindus, Muslims, or Christians or any other community living are treated the same. The Code is based on the Portuguese Civil Code of 1867 and it governs all the personal matters like that of succession, marriage, guardianship, adoption, divorce etc. and ensures gender equality among the Citizens of the State. The adoption of Uniform Civil Code in whole of India is still a constitutional dream. And it is delightful to know that the dream of the adoption of Uniform Civil Code in India has found its realization in the Union Territory of Goa.

With the advent of the personal laws, it has made the women suffer more than anyone as the human rights of the women are interlinked with the personal laws and the social institutions of the country. With the introduction of Uniform Civil Code in our constitution, it will create miracles in ending the social evils in our society that has been formed by the personal laws. The principle of Uniform Civil Code raises the issue of secularism throughout the country which has to be analysed minutely at an enormous length. As there have been various interpretations of secularism, it will be a difficult task. The Uniform Civil Code has both been glorified and criticised.

### **Need of uniform civil code**

Almost all the countries in the world have a common codified law for their civil matters. The basic idea for the implementation of the common law in the country is to end inequalities or disparities that have been created by the religion. From the colonial era, India has been witnessing many codified laws that came into force during the British rule in India like the contract act, the criminal law, transfer of property act and so on and so forth. These were enforced to do away with the religion and the cultural factors. So, the only one thing was left, that is the personal laws which were governed by the religions which regulated marriage, adoption, succession, divorce and other civil matters. As India is a land of diversity with diverse cultures and religions prevailing here. It is said that the oldest part of the legal system is the personal laws of both Hindus and Muslims.

The reasons why India needs the implementation of Uniform Civil Code are as follows:

1. It promotes real secularism.<sup>2</sup>

India today is facing selective secularism though the Indian Constitution in its Preamble says India to be a secular state. As in, in some areas it is declared secular and some areas it isn't. When Uniform Civil Code will be enforced this will make the citizens to follow same civil laws whether they are Hindus, Muslims, Christians or Jains. This is the real

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<sup>2</sup>Aditya Thakur, *Top 7 reasons why India needs a Uniform Civil Code*, HILLPOST (May 27, 2018), <http://hillpost.in/2013/08/top-7-reasons-why-india-needs-a-uniform-civil-code/95038/>.

secular setup that should be established in India. The enforcement of Uniform Civil Code doesn't mean that it will restrict the people to follow their religion but they will be provided with a bonus of the discrimination that was happening under a religion will now be diminished and equality will prevail.

2. Equality for All.

The enforcement of Uniform Civil Code will make the treatment of all Indian the same, hence treating everyone equally irrespective of caste, colour, creed, sex, place of birth and so on and so forth. As in India today we have multiple personal laws, for Eg: in India we have the provision in Muslim Law that a Muslim can marry as many times as they want whereas it was prohibited in Hindu Law or some other personal laws. This is the discrimination that happens via personal laws and it became totally unfair for few other people. Through Uniform Civil Code there will be same civil codified laws for marriage, divorce, inheritance, succession, land, family and so on and so forth. Everyone residing in the Union of India will be treated equally when it comes to civil laws. This will ensure that all Indians are been treated equally.

3. Woman will get the benefit of more rights inside their pockets.

The enforcement of Uniform Civil Code will honour the rights of the woman. It will improve the present conditions of the woman. Indian society has been totally a patriarchal society and has promoted misogyny; where the woman are treated inferior as compared to man and always be tagged by the name of kitchen bearers. In India, still the old, orthodox religious laws are governed over the woman where they are subjected to ill treatment and misbehaviour done to them by the male dominated society. With the coming of Uniform Civil Code there will be a complete end to the old religious laws that made the life of the woman difficult for survival and it will make the society aware that woman too are subjected to be treated equally and will be the beneficiary of same rights that make them at par. It will make the society to treat them fairly.

4. Most of the modern countries have such type of codified law.

The enforcement of Uniform Civil Code is the sign that the country is in progressing index. It shows that the nation has moved forward from castes and religions and the politics regulating that. But in India still caste politics and religion politics are the major source for getting vote and hence the politicians are the one who will never want to end this in spite of the fact they know that by ending these they will help in the growth of the country. India has the highest economic growth but the social growth is still degraded and has not risen. When we look India culturally or socially, it seems that we have engulfed

modern techniques as well as we are still following old traditions which make is neither modern nor orthodox and we are not able to lift ourselves from that level. India is a developing country since ages; this is so that India has not taken any major step yet that it will reach near to the point of being developed so with the enforcement of Uniform Civil Code it will help the Indian society to take a forward step towards becoming a developed nation.

5. Personal Laws are the defective part.

There are many loopholes in the personal laws that are used in ill-mannered by the powerful people and the inferiors are exploited. There are many customs in the personal laws that are contradicting our Constitution. They are in a way exploiting our freedoms that are available in our Constitution. Female infanticide and honour killings are the ways of violating the human rights in India. Personal laws are somewhere advocating these violations and by the introduction of the Uniform Civil Code these all inequalities will come to an end in our country and equal rights will be established in all the religions.

6. Vote Bank Politics will reduce.

The vote bank of politicians is dependent on different religions and they grab the vote on dividing the religion. They even end up getting votes by giving then assurance of uplifting their religions over other. They try to offer the minorities certain advances and in return they demand vote. By the Uniform Civil Code it will help in reducing the vote bank politics and all the personal laws will now be guided by a single civil law. Therefore, if all the personal laws will be engulfed under one law then the politicians will have no say for the offer of advancements. Not adopting Uniform Civil Code in India is contrary to the democracy prevailing in India and it is against the essence of democracy.

7. India will be integrated.

The enforcement of Uniform Civil Code will help in the integration of India more than any other law or code can do. Today, in India there are many difference in the treatment with regard to the people due to the various personal laws and every other personal laws has something different to say in a particular issue. This Code will help every citizen of India to come under one law and follow it without any discrimination and it will help in uniting the citizens of India.

These were some of the reasons why India needs the implementation of Uniform Civil Code as soon as possible but there are still certain issues in India that that forbidding the implementation of this Code.

### **Cases related to uniform civil code**

Recently, again the Supreme Court of India raises the issue of Uniform Civil Code. The Supreme Code of India made to frame the Uniform Civil Code from the Indian Parliament upon its directions in the year 1985 in the case *Mohammad Ahmed Khan v. Shah Bano*,<sup>3</sup> which is popular with the case name of Shah Bano Case. In this case, an impecunious Muslim woman claimed for the maintenance from her Muslim husband after she was given triple talaq from his husband under the Section 125 of the Code of Criminal Procedure, 1973. The apex court, Supreme Court of India on this case held that the Muslim woman Shah Bano has a right to get the maintenance from her husband under the section 125 of the CrPC. The court also held that the Article 44 of the Indian Constitution which talks about Uniform Civil Code remains a dead document. The then Chief Justice of India V.Y. 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 remarkable judgement there were discussions all over the world. The government of that time of Rajiv Gandhi overturned the judgement passed by the Supreme Court of India on the case of Shah Bano and remarked that Muslim woman (Right of Protection of Divorce) Act 1986 curtailed the right to get maintenance from husband under Section 125 CrPC.

The second highlighted case was of the *Sarla Mudgal v. Union of India*<sup>4</sup> when the government again directed the Article 44 of the Indian Constitution. The question aroused in this case was that whether a Hindu man married under a Hindu Law by adopting Islam can do second marriage. The court held that a Hindu marriage done under the Hindu Law can only be ended by the grounds mentioned in the Hindu Marriage Act, 1955. Converting to Islam and marrying again will no way dissolve the marriage done under the Hindu Law and therefore the second marriage done after converting to Islam would be an offence done under the Section 494 of the Indian Penal Code, 1860.

### **Conclusion**

With the enforcement of the Uniform Civil Code it will ensure that India is on the verge of becoming an ideal state in the ideal times and this would be an ideal safeguard of the citizens' rights. India is already a welfare state and the enforcement of the Constitution has been enforced way before but here as India is a diverse country with different religions and cultures that have different personal laws to follow. Every religion in India has different

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<sup>3</sup>AIR 1985 SC 945.

<sup>4</sup>AIR 1995 SC 153.

personal laws to follow and they look the same issues in different ways but still being a diverse it is a country with unity. India is a federal state with sovereign, secular and republic features. The Uniform Civil Code has many aspects like that of social, political and religious. The Uniform Civil Code maintains a balance between the protections of Fundamental Rights and religious doctrines of the individuals. It is a code and it should be just and proper to cater the need of the people according to the needs of the prudent man without any biasness with regards to the political and religious considerations.

Concluding, as in India where different religions are surviving there is the boon called Uniform Civil Code which when will be enforced will unite the citizens of India with a single personal law that will be binding on every citizen of India. The problem arises that in India still, the Uniform Civil code has not yet been ratified and enforced this is just because of one thing that is different religious communities have different personal laws, which makes it difficult to implement at once. Even The All India Muslim Personal Board (AIMPLB) claims that uniform civil code will effectively weaken the democracy's basic duty, i.e. protecting the rights of minorities. This is not yet, even the minority group feels that it's like imposing majority groups view points on them and some orthodox, conservative people says that it would lead to a loss of the culture and the identity of the minorities; which will not happen and in true sense and it is just the mindset of the people. There can be other way round that, Uniform Civil Code should not be forced upon people. It should be made such that it ensures the basic human rights of the citizens are protected and their human dignity is maintained. It should be proposed to bring about the changes in the present prevailing personal laws in India and make them relevant according to present conditions and scenario of the country. In spite of having any external enforcement we can opt for the internal changes in the personal laws. The differences are being created amongst the people because the personal laws are made long way back according to that particular mindset of the people but here being in the modern era the mindset of the people has drastically changed and so the personal laws need some alterations accordingly. Hence the outdated personal laws need reformation according to the conditions. This idea can be the first step to make people comfortable with the total enforcement of the Uniform Civil Code in India which can be done by the discussion in the Parliament; when in future when all personal laws are at the same line it will be easier for the Government to enforce the Uniform Civil Code and it will not make any drastic change in the situation of the country because till that time people will be comfortable with the changes they have in their personal laws and this lead the country citizens to live in peace and harmony.