

# LEGALFOXES LAW TIMES

## Uniform Civil Code: An Analysis

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The idea of UCC is to give India a uniform code of conduct to govern the nation in a more pragmatic manner. India is a secular country with multi-religions and multi-languages. The people are governed by their own personal laws which makes it difficult to deliver justice uniformly to all. There were big concerns regarding the issue and therefore steps were taken to consolidate the nation in the form of UCC in the constituent assembly on 1947. Uniform Civil Code is given under Article 44<sup>1</sup> of the Constitution of India which envisages that, as and when, if the majority in the Parliament thinks fit, attempt shall be made to unify the personal laws of the country. These personal laws are different for every community, religion, etc. These repressive evils must be eliminated from the society to bring justice to all.

Article 44 of the Indian constitution mandates the implementation in matters related to maintenance, inheritance, divorce, succession, adoption and marriage. But this is hindered by the effect of non-binding nature of the Directive Principles of State Policy.<sup>2</sup> Some people also critically analyze it for the sake of minority's identity being overlooked. There exist differences in the governance of such personal laws. To curb the inequality and give justice to everyone prescribed in the manner which proves that there is no threat to religious identities and practices.

Constitution of India states the word 'secular' in the preamble which means that the people will not follow a particular religion and neither will the people be discriminated. Article 25<sup>3</sup> and article 26<sup>4</sup> of the

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<sup>1</sup> Art. 44 The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India

<sup>2</sup>Part IV of The Constitution of India

<sup>3</sup>Art. 25. Freedom of conscience and free profession, practice and propagation of religion:

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

Indian constitution itself states that the people are allowed to follow their religions and they shall not be discriminated. The term 'secular' is important because the partition of India and Pakistan was based on the difference of religions among Hindus and Muslims. Religion is a very sensitive issue in India and it catches the nerve of the people. The sensitivity of the issue must be dealt in a thoughtful way as it has always been used by politicians to create a source of conflict. In broader sense the personal laws can be stated as Hindu law, Christian law and Islamic law. For example, Hindus, Sikhs, Jains and Buddhists are governed by Hindu law, Muslims by Islamic law and Christians by Christian law.

The issues that exist in the fact are the differences within the different personal laws as they lack uniformity when it comes to decision making. There have been cases where women are deprived of their rights in their given personal laws. The solution to all these issues lies in the governance of Uniform Civil Code. It simply means uniformly running of the personal laws in the nation which shall be equal to all citizens. It will replace the existing different personal laws and have a uniform law to govern the citizens may they be of any religion. This is given under Article 44 but there has been issues as it is considered to be in violation of Article 25 of the Indian constitution.

Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. India is a country with diverse religions and the interdependence of them on laws must not be done. They must be kept outside the purview of the laws. The uniformity in the governance of the code must be kept in mind. The Constitution makers focused on this view and kept this under the Directive Principles to be adopted someday when the nation deems fit. There are numerous case laws related to this issue. All of them involved the infringement of rights of an individual on the basis of personal laws. There are so many religions and so many different ways to govern and tackle their situation based on their custom. The judiciary being unbiased reaches out to the people in an equal manner. The idea is to reduce the differences present in the society and not create more issues. India is home to several other religions and it is not a homogenous nation like the other foreign states. It is

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<sup>4</sup> Art. 26 Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right: (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law

therefore not suitable for everyone to have different laws to govern them. The judicial system also focuses on the same approach. The religious laws of a Kashmiri Pandit Woman are different from the laws of a Muslim woman.

There have been several case laws which focuses on this issue of inequality. The women especially suffer from such unequal behavior of their personal laws. They are restricted to practice certain rights. There have been landmark judgements which covers this area like *Sarla Mudgal*<sup>5</sup> case, *Shah Bano*<sup>6</sup> case, *Shayara Bano*<sup>7</sup> case and many others.

There have been various interpretations involving UCC and the interpretations mainly involves the question of secularism. It needs to be analyzed in great length. It is criticized as well as appreciated by different people. The mindset of the people with regards to the code UCC is different. Some people consider it anti-secular whereas some people consider it as a boon.

At the end, the question regarding the human rights of Indian women appear in background. Therefore, it is very well required to understand the need for adoption of UCC and that it would lead to the equality in status of everyone or that it would not be just a communal agenda.

Religious personal laws are prevented from reforms because of its interdependence on the law and therefore there's a denial in equality to Indian women. Constitution states the word 'secularism'<sup>8</sup> and it has been integral and important to India's democracy but at present its usage and limits are discussed and debated. Deep and accurate insight of the analysis on the uncertainty of the term secularism is given. The big debate regarding this is if the code of UCC governs all people then does it supersede the right of citizens to be governed by their respective personal laws based on their ethnicity. There was a bill introduced in the parliament regarding the uniform civil code but it never passed because of the objections raised by the parliament. One of the argument was that Islam does not recognize adoption and hence it

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<sup>5</sup>AIR 1995 SCC 1531

<sup>6</sup>1985 AIR 945, 1985 SCR (3) 844

<sup>7</sup> writ petition (c) No. 118 of 2016

<sup>8</sup>preamble to the Indian Constitution

would violate Article 25<sup>9</sup> of the Indian constitution which gives the citizens the right to profess and practice any religion. However, this article protects only such practices which are essential in the part of religion. Although the custom of adoption in Islam was prevalent in the pre-Islamic era. State must strive to remove such inequalities which are prevalent in the society, this is given in Article 38(2)<sup>10</sup> of the Indian Constitution. UCC will therefore endeavor to remove the unequal status of a child of any religion, be a Hindu or a non-Hindu. There has been various guidelines and considerations proposed to govern the people with UCC but the attempts went in vain. The gravity of the issue is not understood by the majority and a blindfold of customs supersedes the rights. India has been suffering since a long time because it has been unattended. This is a concept which must be debated and focused upon prudently. The importance must be given to the UCC and a middle way be made for the same. The government is seen not interfering with such personal laws of communities which abridges the rights of women and the absence of such demands is seen from the side of the governing bodies.

UCC deals in detail the challenges faced with the implementation and proposes the steps for the successful implementation and further governance and enactment of the same. It can be done without any violence and causing riots. The comparison of the personal laws of Hindus and Muslims and the uniform civil code is drawn. The study of the amendments of the personal laws are done by the researchers. It has to be understood by the parliament, citizens and everyone else that the rights of an individual is more important than the orthodox customs which has been now reached the bottleneck. The society needs to understand that the natural rights of a person are far more superior than the vague rules of the customs. That the women in the society pays equal role in the development and the infringement of their rights nothing but shameful. It is the need of the hour.

Muslim woman is assumed to be oppressed and downtrodden and comparison is made with corresponding Hindu woman having the protection of a codified uniform personal law. Since the Hindu personal law has been codified, the rights of Hindu women have taken a backseat, assumed to be well

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<sup>9</sup>Freedom of conscience and free profession, practice and propagation of religion

<sup>10</sup>article 38(2) the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

protected by a codified personal law and in a better position than a Muslim woman who still suffers the brunt of their archaic personal law.<sup>11</sup>The indifference in the personal laws has left women to suffer the most. There has to be a way to find a middle path in order to govern the personal laws in a uniform manner without hurting the sentiments of the people. While some communities are moving forward with time, there are others which are backward. The communities must take inspirations from other communities to avoid failures and eradicate human right violations. The vision is to move forward and have a peaceful society and not to indulge in the undue haste of religious affairs. The evils of the society must be handled in a more rational and pragmatic manner.

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<sup>11</sup>Shambhavi, *Uniform Civil Code: The necessity and the absurdity*, (Summer Issue, 2017), <http://ili.ac.in/pdf/paper217.pdf>