

## Debate on Uniform Civil Code

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### Abstract

*The debate for a Uniform Civil Code in India can be dated back to the time of English East India Company's rule. During the company's rule the British endeavoured to reform social and religious practices of two major religious communities in India. The English enacted many legislations owing to ensure justice and establish uniformity in codification. The First Law Commission report called Lex Loci report emphasised the necessity of uniformity in codification of law pertaining to crimes, evidences and contract ..., but it recommended that the Personal Law of Hindus and Muslims should be away from such codification.*

*In the Independent India, the framers of the Constitution felt the need for Uniform Civil Code for the citizens of India therefore, they incorporated Article 44 in the constitution of India under Directive Principles of State Policy which states that "The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India, though it displaces the right of citizens to be governed under different personal laws. In the recent past the need for a Uniform Civil Code is strongly advocated by all liberal minded people in our country in order to secure equal status to all citizens, promote gender parity and support national integration. A five judge bench of Supreme Court in Shah Bano's case noted that article 44 of the Indian constitution has remained a "dead letter" and that it is ultimately the duty of the state, which has the legislative competence, to enact a uniform civil code. What remains to be seen is whether the country is ready for such a drastic change and if the government is ready to implement a uniform civil code without political bias.*

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### I. INTRODUCTION

Uniform Civil Code implies that all people, though belonging to different religion, caste and creed, shall be treated in accordance with National Civil Code equally. Also it mandates to replace Personal Laws based on the scriptures and customs pertaining to marriage, divorce, maintenance, and inheritance of property and adoption of legal heir in the family of various communities of India such as Hindus, Christians, Muslims and others. Since India's Independence, there has been tremendous dispute over the Personal Religious Laws and an emphasis on the necessity to adopt the Uniform Civil Code. Dr.B.R.Ambedkar, the Chairman of the drafting committee of the constituent assembly and many other eminent nationalist leaders such as Alladi Krishnaswami Iyer, Gopal Swamy Iyenger and K.M.Munshi favoured the implementation of the Uniform Civil Code. But it was vehemently opposed by the Muslim fundamentalists so also other community leaders. Hence, the framers of the Indian constitution compromised by incorporating an Article-44 into the Directive Principles of State Policy. In accordance with the directive "the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India" to preserve and promote justice, equality and national integrity. In spite of the fact, that the constitution of India having a directive that empowers the central legislature and executive to enforce a uniform civil code, this directive has not yet been enforced. Thus constitution of India believes that owing to secure national integration; to treat all people of India equally and to ensure justice for all a Uniform Civil Code (UCC) should be implemented in some manner, though, the constitution of India does not make the implementation of UCC mandatory. Subsequently, the practice of different personal religious laws paved the way for gender inequalities and denial of justice to women. Furthermore, Indian society has been fragmented in the name of religion, sect and gender. Hence, the need for Uniform Civil Code has become an inevitable aspect in the modern India.

#### 1. Uniform Civil Code

A Uniform Civil Code administers the same set of secular civil laws to govern different people belonging to different religions and regions. This supersedes the right of citizens to be governed under different personal laws based on their religion or ethnicity. India is a nation which maintains unity in diversity. There have been lots of differences in the religious beliefs and practices among various religious communities

live in India, therefore, the distinguished members of the constituent assembly could not incorporate a Uniform Civil Code into the constitution of India. However, in the twenty first century, it has been universally accepted that, regardless of the community, the personal laws are twisted against women treating them as inferior to men. Therefore, uniform civil code will provide equal rights to men and women. The absence of a uniform civil code is responsible for calamitous vicissitude of women in almost all the faiths.

The crusade for the implementation of the Uniform Civil Code and homogenizing the personal laws is surely justified in the twenty first century and it should receive a wholehearted support of all Indians who claim to be liberal minded and progressive thinking. Uniform Civil Code, codified on the basis of rational and non-religious, is a vital component in the process of integration of India. A true integration of the country would bring the entire sections of people into a common platform and enable us to effect a National Civil Code and a true secularism. Above all it is vital, for a secular state like India, to show equal respect for all religions and also the rights entrusted to the citizens of India such as:-

The Preamble to the constitution of India states that the people of India have solemnly resolved to secure to all its citizens social, economic and political justice; equality of status and of opportunity, assuring the dignity of the individual and the unity and integrity of the Nation and,

- i) Article-14 of the constitution of India guarantees equality before the laws and equal protection of laws as a fundamental right.
- ii) Article-15 of the constitution of India guarantees that the state shall not discriminate against any citizen on grounds of religion, caste and gender.
- iii) Article 25 of the constitution of India guarantees Right to profess, practice and propagate religion,
- iv) Article 26 of the constitution of India guarantees Right to manage its own affairs in matter of religion and
- v) Article 29 of the constitution of India guarantees Rights to minorities to conserve their culture.

The constitution of India has been enshrined with very impressive and effective provisions to secure to all its citizens justice, equality and dignity, now the questions arise as to whether an Indian Mohammedan woman married or divorced gets equality of status and dignity, treated equally before the laws and not discriminated on the ground of sex, under the Muslim Personal Law (Shari'a) Application Act 1937.

## **2. The Shah Bano Case (1985 AIR 945, 1985 SCC (2) 556)**

Shah Bano, a Muslim woman from Indore, Madhya Pradesh was divorced by her husband in 1978. In accordance with the Personal Law of the Muslim the husband needs to say "Talaq", meaning divorce, three times before two witnesses for a valid divorce. Shah Bano had decided to approach judiciary for securing maintenance from her husband as she had no source of income. The Supreme Court invoked section 125 of Code of Criminal Procedure, which applies to everyone regardless of caste, creed or religion. The Court ruled that Shah Bano be given maintenance money, similar to alimony. It sparked off huge protest among Muslim leaders who accused the judiciary for interfering in their personal law. The government of India passed an act called The Muslim Women (Protection of Rights on Divorce) Act in 1986 which invalidated the Supreme Court verdict.

## **3. John Vallamattom Case (AIR 2003 SC 2902)**

In July 2003, a Christian priest from Kerala, John Vallamattom challenged the constitutional validity of section 118 of the Indian Succession Act of 1925, he appealed to the Supreme Court of India to strike down section 118 of the Indian Succession Act which imposes unreasonable restrictions on Christians from willing bequeath of their own property for charitable and religious purposes. The court struck down the section declaring it to be unconstitutional and regretted for the government's inability to enact a Uniform Civil Code.

## **4. Hindu Code Bills**

In the 1950s a sincere attempt was made by the government led by the then Prime Minister of India Pt. Jawaharlal Nehru to codify and reform the Hindu personal law. This effort of the government was vehemently opposed by the conservative Hindu politicians and organisations. However, the Nehru government saw such codification as very vital to unify the Hindu community, which in turn would be a wonderful step towards unifying the nation. Eventually, the Nehru government succeeded in passing four Hindu code bills between 1955 and 1956. They are:-

- i) The Hindu Marriage Act (1955)
- ii) The Hindu Succession Act (1956)
- iii) The Hindu Minority and Guardianship Act (1956) and
- iv) The Hindu Adoptions and Maintenance Act. (1956)

The people of India who follow Hinduism have lots of diversity in race, psychology, habitat, employment and way of life and they have been deeming Dharmasastra – the textual authority as the private law of the Hindus for marriage and divorce, adoption, the joint family, minorities, succession, religious endowments and caste privileges. Hence, the Hindu code bill failed to control the prevalent gender discrimination.

In this modern world many Islamic countries like Egypt, Turkey and Pakistan have codified and reformed Muslim personal law to check its misuse. Muslim Family Law Ordinance of Pakistan promulgated in 1961, makes it obligatory for a man who desires to take a second wife to obtain a written permission from a government appointed Arbitration Council. Until 1947, India and Pakistan had governed Muslims under the Shariat Act of 1937, then why India should continue with highly discriminatory personal laws. Polygamy has also been either eradicated or severely restricted in Syria, Egypt, Turkey, Morocco and Iran. If Muslim countries can reform Muslim personal law, and if western democracies have fully secular system, then why are Indian Muslims living under laws passed in the 1930s?

#### **5. Advantages of Uniform Civil Code**

- Uniform Civil Code will support the principles of Equality, Justice and welfare of women.
- Implementation of Uniform Civil Code will enable us to materialise the supreme objective of unity and integrity of the nation despite diversity.
- Article 44 of the Indian constitution can be transformed into enforceable Uniform Civil Code.
- Uniform Civil Code will eradicate polygamy and promote monogamy among all citizens of India. It will also lead to betterment in the position of Indian women and will ensure uniform rights for them.
- A Uniform Civil Code will help for a significant economic and social growth paving the way for India becoming a developed nation.

## **II. CONCLUSION**

The country has already been suffering a lot in the absence of a uniform civil code for all, as such; the need for uniform civil code has been felt for more than a century. It is high time that India has a uniform civil code dealing with all civil subjects so that we are in a position to put an end to religious fundamentalism, social and economic injustice and exploitation done to women, and enable us to ensure dignity of women and to guarantee basic human rights to all.

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