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UNIFORM CIVIL CODE: A NEED FOR INDIA



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UNIFORM CIVIL CODE: A NEED FOR INDIA

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Dr. B.R. Ambedkar once quoted, “I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for?”

WHAT IS THE UNIFORM CIVIL CODE?

Uniform Civil Code means a common law, which would be applicable to all citizens of the nation in matters including but not restricted to marriage, inheritance, divorce, adoption.² This is to replace the personal laws based on scriptures and customs of

every major religious community in the country with a common set of rules governing every citizen. Article 44 of the Indian Constitution states that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

HISTORICAL BACKGROUND:

³On the basis of Lex Loci report, the British Government in 1840 framed Uniform laws for evidence, crimes and contracts. They however left the personal laws of Hindus and Muslims. In those days many reforms raised their voice to frame laws related to discrimination against women like Sati etc. During the debates in the Constituent Assembly, eminent personas like Dr. B.R. Ambedkar, K.M. Munshi, Alladi Krishnaswamy Iyer strongly supported for the Uniform Civil Code. As there was a strong opposition by the minorities against UCC, the Code was not implemented. However, a line was added in the Constitution of India under Article 44 in

¹<https://www.thehindu.com/news/national/ambedkar-favoured-common-civil-code/article7934565.ece>

² The Uniform Civil Code by Krati
<http://www.legalserviceindia.com/legal/article-773-uniform-civil-code>.

³<https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1>

Part IV of Directive Principles of State Policy in this regard.

Hindu code bill

The Hindu code bills were laws passed in 1950s to reform Hindu personal laws in India. As there was intense opposition, they succeeded in passing four bills.

Hindu Marriage Act 1955

This Act came into force to amend and codify the law relating to marriage among Hindus. Section 5 of this Act slates the condition for a Hindu marriage which require the bridegroom to complete the age of twenty-one years and the bride should have had attained eighteen years of age at the time of marriage.

Hindu Succession Act 1956

This act is to amend and codify the law relating to intestate succession among Hindus.⁴The mentioned Act applies to any person, who is a Hindu by religion in any forms including Virashaiva, a Lingayat, Prarthana and to any person who is Buddhist, Jainas or Sikhs.

Hindu Minority and Guardianship Act, 1956

Under this Act, a person who is below the age of eighteen is a minor and is incapable

of taking care of him and his affairs, thus requires support and protection. Under such a situation, a guardian is needed for his care.

Hindu Adoption and Maintenance Act, 1956

Laws relating to adoption and maintenance depend upon the personal laws of varying religions. The Act contains provisions related to adoption of children, maintenance of wives, children, etc.

CASES RAISING THE QUESTION OF UNIFORM CIVIL CODE

⁵Mohd. Ahmed khan v. Shah Bano Begum:

Shah Bano Begum was married to Mohd. Ahmad Khan, who was a lawyer in Indore. They lived together for 43 years and had three sons and two daughters. Later Ahmed khan married another woman who was younger to him. In 1975, Shah Bano Begum at the age of 62 years old was divorced by her husband, leaving the five children with her. In 1978, he stopped giving her Rupees 200 which he had promised. This made her to file a claim for maintenance for herself and five children under Section 125 of Code of Criminal Procedure, 1973. The Section

⁴ The Hindu Succession Act 1956 <https://indiankanoon.org/doc/685111/>

⁵ Mohd. Ahmed khan v. Shah Bano Begum 1985 AIR 945, 1985 SCR (3) 844

puts a legal obligation in the case of a wife without any income if neglected by her husband is entitled to maintenance, even though she is divorced and not remarried. Mohd. Ahmed Khan argument was supported by the All India Muslim Personal Law Board, which said that the courts cannot take liberty to interfere with laws laid out in Muslim Personal law, as it would violate The Muslim Personal Law Act 1937. Finally, the Supreme Court gave the decision in favour of Shah Bano Begum by applying Section 125 of Code of Criminal Procedure and it further stated that it is applicable to every citizen irrespective of religion. Hon'ble Chief Justice Y.V. Chandrachud observed that, a common Civil Code would help the cause of national integration by removing disparate loyalties to law. This made the Hon'ble court direct the Parliament to frame the UCC. However, the then government overturned the decision by passing The Muslim Women's (Right to protection on divorce) Act 1986.

This is the second time wherein the Hon'ble Supreme Court directed the Government under Article 44.

⁶Smt. Sarla Mudgal vs Union of India & Ors:

⁶ Smt. Sarla Mudgal vs Union of India & Ors 1995 AIR 1531, 1995 SCC (3) 635

This case has four petitioners under Article 32 of the Indian Constitution. Petitioner 1 is the president of "KALYANI"- a registered society - which is an organisation working for the welfare of needy families and women in distress. The second petitioner was Meena Mathur who was married to Jithender in 1978. In 1988, she came to know that her husband had solemnized second marriage with Sunita Narula and converted to Islam. Sunita further contended that her husband converting to Islamic religion was only for the purpose of marrying her. Sunita, who is one of the petitioners stated that a son was born to the couple. After the marriage, Jithender, under the influence of his first wife reverted back to Hinduism and agreed to maintain her and the three children. Geeta Rani, is yet another petitioner who was married to Pradeep. He ran away with Deepa and married her after converting to Islam. Sushmita Ghosh who was married to G.C. Ghosh according to Hindu rites on 1984. In 1992 he told his wife that he no longer wanted to live with her, and she should agree for the divorce. He told that he will be marrying Vinita Gupta and also obtained a certificate from Qazi indicating that he had embraced Islam. The question was whether a Hindu husband, married under Hindu law

see:<https://lawbriefs.in/sarla-mudgal-v-union-of-india1995-second-marriage-is-invalid-unless-and-until-first-marriage-is-dissolved/>

by embracing Islam, can solemnize a second marriage. The Supreme court held that second marriage of a Hindu husband after the conversion to Islam is offence under Section 494 of Indian Penal Code.

John Vallamattom Vs Union of India:

⁷John Vallamattom a priest from Kerala, filed a writ petition in 1997 and stated that Section 118 of Indian Succession Act was discriminatory against Christians as it imposes restrictions on their donation of property for religious purposes by will. The then Chief Justice V.V Khare, Justice S.B Sinha and Justice A.R. Lakshamanan struck down the Section and declared unconstitutional. Here V.V Khare said that *Common Civil Code will help the cause of national integration by removing the contradictions based on ideologies.*

UNIFORM CIVIL CODE IN GOA

⁸Goa is the only state in India that has UCC. This civil code is based on the Portuguese Civil Code 1867, and was introduced in Goa in 1870. In Goa People who are Muslims, Hindus and Christians are bound by same law which relate to marriage,

succession, divorce. The UCC in Goa allows equal distribution of income and property between husband, wife and children and stands out as a fair example for the nation to follow.

VIEWS OF PEOPLE WHO ARE IN FAVOUR OF THE UNIFORM CIVIL CODE

- Women are still facing discriminatory issues even post-Independence. Men generally have upper preferential status than women in matters of succession and inheritance. Uniform Civil Code is bound to abolish such gender discrimination.
- Our country has a diversified cultural value and the UCC irrespective of caste, gender, creed etc will boost the national unity.
- ⁹Fifty five percent of the Indian population are below the age of 25 years. Their attitudes and aspirations are shaped by universal and global principles of equality, humanity and modernity.
- Several Courts in varying judgments have preferred to bring the Uniform Civil Code.

⁷<https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1>

⁸<http://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa>

⁹See: <https://www.clearias.com/uniform-civil-code-ucc/>

VIEWS OF PEOPLE WHO ARE AGAINST THE UNIFORM CIVIL CODE

from discrimination and ensure that they are treated equal to men.

- Many argue that personal laws are derived from religious beliefs and we should not disturb them.
- People tend to argue that Article 25, 26 and 29 deal with religious and cultural freedom are fundamental rights and these often conflict with each other.
- ¹⁰As the Constitution provides the right to freedom of religion, it will reduce the scope of freedom by codifying the Uniform Civil Code.
- It is difficult to come up with uniform rules for issues like marriage as India has a large cultural diversity. This is not the right time to codify UCC to replace personal laws.

CONCLUSION

As from the above discussion, I personally recommend for the codification of Uniform Civil Code strongly as it provide equal status to everyone irrespective of their religion and protects their fundamental and constitutional rights. It also protects women

¹⁰ See:

<https://www.insightsonindia.com/2019/07/09/uniform-civil-code/>



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