

Towards Uniform Civil Code: A Mandate under Indian Constitution

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Abstract: It is well settled that the interpretation by Supreme Court of India of several provisions of the Constitution of India and other laws in respect of making uniformity in India is satisfactory and the Uniform Civil Code as provided in the Constitution of India is a mandate and to be implemented by making a uniform law for the unity and integrity of India. In this paper the author has formulated the following questions and has tried to explain in detail as per his research i.e. What is the main purpose of the provision of Article 44 of the Constitution of India? What is the relationship between personal laws and religion? What is the role of judiciary in directing the state to make Uniform Civil Code? Whether Article 25 of the Constitution of India protects the personal laws?

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1. Introduction:

The word “Uniform” denotes equality, similarity etc. in every field of life. Uniform Civil Code (UCC) denotes equal principle of law for the personal matters of human beings. Everyone is equal in democratic type of society as in India. Equality is a way of peace, fraternity, tranquility brotherhood and cooperation. Most of the laws are codified uniformly for every citizen in India. There are some fields of Muslim law which are not codified like marriage, succession, divorce, maintenance etc. Therefore it is obligatory on part of the State to make a uniform personal law for all the communities of Indian society. The India's national character is sovereign, socialist, secular, democratic and republic. Therefore the state is duty bound under the Constitution of India to grant all the citizens **justice**- social, economic and political, **liberty** of thought, expression, belief, faith and worship, **equality** of status and of opportunity and **fraternity** assuring the dignity of individual and the **unity and integrity of the nation**. Uniform Civil Code is one of the requirements to achieve the abovementioned constitutional objectives and goals. In India, these principles of constitutional goals demand the uniformity in the legislation. A Uniform Civil Code is very necessary for achieving the unity, integrity and solidarity of the nation which is given by the very preamble of the Constitution of India. The main purpose of Uniform Civil Code as provided under Article 44 is to provide dispensation of justice, equality, opportunity to the people of India which can be achieved by equal principles of law for each citizen.

2. Constitution Assembly Debate and Uniform Civil Code:

The idea of Uniform Civil Code came in the constituent assembly in 1947. The Sub- Committee on

FR included the Uniform Civil Code as one of the DPSP. Article 35 of Draft constitution¹ read as follows:-

“The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.”

At the time of debate, the subcommittee on FR recommended that the application of Uniform Civil Code for all citizens should be made on voluntary basis.² At the time of debate in the constituent assembly, the provision for ucc was strongly opposed by the members representing the muslim community. These members were Shri Mohd. Ismail sahib, Shri Paker Bahadur sahib, Shri Mahboob Ali Baig sahib bahadur, shri Naziruddin Ahmad and Shri hussain Imam. They all pleaded for the amendment to article 35 of the Draft Constitution that would allow the community to maintain their personal laws.

Shri Mahboob Ali Baig sahib bahadurs moved a proviso to art 35 of the Draft Constitution that **“nothing in this article shall affect the personal laws of a citizen.”**³

Other members like *Shri Mohd. Ismail sahib, Shri Paker Bahadur sahib, shri Naziruddin Ahmad and Shri hussain Imam* also suggested their amendments to article 35 of the Draft Constitution. The members suggesting the proviso were speaking not only on behalf of muslims but for other communities also. These members unanimously raised the following points in Constitutional Assembly debate: -

¹ Article 44 of the Constitution of India

² Shiva Rao, “Framing of India's Constitution”, Vol. 11, select doc., 206. Tripathi (1969), debate of 19 April 1947.

³ CAD, Vol. 7, p. 543 (23rd Nov. 1948).

1. The fundamental rights guaranteed by the Constitution adherence to one's own personal law has been recognized, hence Uniform Civil Code would be in contravention of that right;

2. Interference by government with personal law would affect the life style of the people and hence it would violate the FR to life and the concept of Secularism.

3. Even the foreign Ruler did not disturb the personal laws of the people why this concept of UCC is going to be added.

4. The country is so vast and diverse that the uniformity of law is not possible.

Dr. B.R. Ambedkar, Shri K.M. Munshi, Shri Alladi Krishna Ayyar were main supporter of Uniform Civil Code and they strongly opposed any kinds of amendment to Art. 35 of the draft Constitution⁴.

Mr K.M. Munshi supporting the Uniform Civil Code told that Article 19 of the Draft constitution⁵ is covering the secular activities. He felt that a Uniform Civil Code was necessary for achieving the *unity and solidarity*⁶ of nation.

Dr. B.R. Ambedkar argued that we had already a Uniform Civil Code in all matters like a Uniform criminal code, Uniform property laws etc. He argued that muslim law may be changed in order to implement the provision of Uniform Civil Code because muslim law was ununiform up to 1935 i.e. North-west frontier was not subject to the Sariat Law. It followed the Hindu law in matters of succession and in other matters. Due to the above reason he opposed the amendment to Article 35 of the Draft Constitution.⁷

Shri Alladi Krishna Ayyar opposed any kind of amendment to Article 35 of the Draft constitution. He added in his argument that when the British occupied this country, they introduced a common criminal law in the country which shall be applicable to all citizens whether they be hindu, be muslim, be britishers and on that muslim took no exception. Further he added that we have a common law of contracts governing transactions between Muslims and hindu, between Muslims and Muslims. All are governed by the general law and not by the Quran⁸. For the above reason he submitted that this Article 35 be passed.

The main emphasis of debate was that all laws in India have been codified except the personal law. In other countries the personal law is in codified form

so in India also the personal law should be codified at the earliest. After a long debate Art 35 of the Draft constitution was accepted without any amendment, as it stood and it was later renumbered as Article 44 of the Constitution of India and it read as follow:

"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

3. Uniform Civil Code- A Constitutional Mandate:

During the struggle for independence our leader who came from different streams of the society, religion, caste, creed etc. They had visualized the picture of independent India. They wanted to make this republic on the four pillars of **justice, liberty, equality and fraternity**. They formulated some ideas which the succeeding Governments were to achieve. These principles were put down in Part-IV of the Constitution of India named as 'Directive Principle of State Policy'. The Govt. is bound to obey these directives. The Uniform Civil Code⁹ is one of the directives or mandates to which the Govt. of India or the state shall consider in making law. This mandate is contained in Article 44 of the Constitution of India which reads as follows:-

"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

The term 'State' is defined u/**Article 12** of the Constitution of India which includes *the Central Govt., the State Govt., Union and State Legislatures and Local Bodies*. As long as any Govt. assumes the office, after taking the oath of faithfulness to the Constitution of India, they cannot escape of the responsibility flowing from Article 44 of the Constitution of India. The expression '**Unity and Integrity of the Nation**' was inserted in the preamble of the Constitution of India by The Constitution (42nd Amendment) Act, 1976. By the same amendment **Article 51A** has been introduced which provides that the duties of every citizen of India include-

Clause (a) - to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;

Clause (c) - to uphold and protect the sovereignty, unity and integrity of India;

Clause (e) - to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

⁴ The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

⁵ Art. 25 of the existing Constitution of India.

⁶ K. M. Munshi, CAD, Vol. 7, p. 548.

⁷ CAD, Vol. 7, pp. 550-552.

⁸ CAD, Vol. 7, p. 549 (23rd Nov. 1948).

⁹ Article 44 of the Constitution of India says, *"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."*

India is a secular state, for this purpose Article 25 of the Constitution of India has been introduced which guarantees freedom of religion, conscience and freedom to profess, practice, and propagate religion, to all persons in India. But this right is not an absolute right. State may, by law, restrict such right¹⁰. Article 44 of the Constitution of India is a mandatory provision for the State to make a uniform law on the matter of personal laws of the communities. The Supreme Court of India said, "A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law..... But it is the state which is charged with the duty of securing a Uniform Civil Code for the citizens of the country."¹¹

Overall the writer is of the view that State is under duty to make and unify the personal laws of the community but it is escaping from doing so because of vote bank of the community in the election.

4. Uniform Civil Code and Personal Laws:

4.1. What is Civil Code?

Article 44 of the constitution does not define the expression 'civil code'. In the present context, civil law would relate to various aspects of personal relations, such as, contract, property, marriage, succession, and the like. The concurrent list of Schedule 7 of the constitution of India includes the following thing in civil code,- "Marriage and divorce, adoption, wills and succession, joint family and partition, transfer of property, contract, actionable wrongs, bankruptcy and insolvency, trusts and trustees, evidence, civil procedure".¹²

Civil code would relate to that branch of private laws (excluding public laws) which deals with the civil rights and obligations of individuals such as CPC, Evidence Act, TPA and the like.¹³ Thus the Uniform Civil Code concerned with only a very small piece of civil law which we call the personal laws of different communities in India. The expression "Uniform Civil Code" denotes a very small piece of civil law relating to marriage, succession, adoption and maintenance and this field of personal law posing the problem because of its

intimate relationship with religious injunction, practice and beliefs.¹⁴

4.2. What is Personal Laws?

The expression "Personal law" means the law which governs a person's family matters generally regardless of where the person goes. The framers of Constitution of India meant by the word 'personal law' as "marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this constitution subject to their personal law"¹⁵. The Government of India Act, 1935 says about personal law as "marriage and divorce; infants and minors; adoption; wills; intestacy and succession".¹⁶

4.3. Whether Article 25 protects the personal laws:

The community opposing the Uniform Civil Code took the plea that Art. 25 of the Constitution of India guarantee the fundamental right to freedom of religion and unifying their personal laws would violate their fundamental right. But this is not true because this Article 25 guarantees only freedom of religion and it is based on relationship between person and God and not between person and person. It means that if the legislature enacts any law unifying the personal / family matters of the community then it does not violate any right of any community. It is because family matters relates between person and person and not between person and God. Article 25 guarantees religious freedom while Article 44 seeks to divest religion from social relations and personal law¹⁷. Therefore we can say that Article 25 does not protect the personal law of any community. The freedom of religion guaranteed u/Art. 25 of the Constitution of India is also subject to other provisions of Part III of the Constitution of India and therefore personal laws can't be remote the reach of Articles 14, 15(1) and 21 of the Constitution of India.

The SC observed that Article 44 is based on the concept that there is no necessary connection between religion and personal laws in a civilized society. Article 25 guarantees the religious freedom whereas Article 44 seeks to divest religion from social relations and personal law.¹⁸

¹⁰ Article 25(2) of the Constitution of India, "Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."

¹¹ Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.

¹² See Entries – 5, 6, 7, 8, 9, 10, 12 and 13 of list 3 of 7th schedule of Constitution of India.

¹³ D.D. Basu, "Uniform Civil Code for India", 2nd Ed., p. 2.

¹⁴ Krishnayan Sen, "Uniform Civil Code", economic and political weekly, vol. 39. No. 37 (sep. 11-17, 2004), p. 4196.

¹⁵ See in Entry 5 of List 3 of the 7th Schedule of the Constitution of India.

¹⁶ See entries 6 and 7 of The Government of India Act, 1935.

¹⁷ M.P. Jain, "Indian Constitutional Law", Ed. 6th, 2010.

¹⁸ Sarla Mudgal v. UOI, (1995) 3 SCC, p. 635.

We had uniform codes of laws which cover almost every aspect of legal relationship excluding those matters which are governed by the various personal laws. ¹⁹ The only that area which was not covered by the Uniform Civil Code was succession and marriage, it was the intention of the framers of Article 44 to bring that change.

5. Uniform Civil Code and Judicial Approach:

Article 44 of the Constitution of India is one of the directive principles of state policy which provides for the Uniform Civil Code. ²⁰ According to Article 37 of the Constitution of India the provisions of this Article shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Today 60 years have been lapsed after the enforcement of the Constitution of India but the Indian Government had not yet enforced the directive of Article 44 of the Constitution of India. By seeing the non action on part of the government of India, the SC gave many verdicts in support of the implementation of Article 44 of the Constitution of India.

In Mohd. Ahmed Khan v. Shah Bano begum ²¹, the Supreme Court of India observed that it is a matter of regret that till now Article 44 of Constitution of India ²² has remained a dead letter. It seems that the muslim community has to take a lead in the matter of reforms their personal law. The government of India is duty bound of securing a Uniform Civil Code for the citizens of India and no doubt it has legislative capability to do so.

In *Jorden Diengdeh v. S.S. Chopara* ²³, the Supreme Court of India observe that the law relating to marriage, divorce and judicial separation is far from uniform so the time has come to make a uniform law which would be applicable to all person irrespective of their religion and caste. The court suggested the government of India to legislate a Uniform Civil Code on marriage and divorce.

In another landmark judgment in *Danial Latif v. UOI* ²⁴ the Supreme Court of India upheld the constitutional validity of the Muslim Women(Protection of right on Divorce) Act, 1986 and held that muslim divorced women has right to get

maintenance even after iddat period under the Act of 1986. The Supreme Court of India has given this judgment with a view to unifying the family matters.

In *John Vallamattom v. UOI*, ²⁵ the Supreme Court of India once again express regret for non enactment of Uniform Civil Code. In this case section 118 of the Indian Succession Act was challenged on the ground that it is violative of article 14, 25 and 26 of the Constitution of India. The CJ V.N. Khare in view of above fact forcefully reiterated that the Uniform Civil Code be enacted as it would solve the problem relating to family matters.

In *Sarla Mudgal v. UOI* ²⁶, the Supreme Court of India has directed the PM to take fresh step of Article 44 of the Constitution of India towards securing a Uniform Civil Code for Indian citizen which is necessary for the national unity and integrity. This judgment was pronounced by Supreme Court of India while dealing with a question that whether a Hindu husband married under Hindu law, and then converted into Muslim, without dissolving the first marriage, can solemnize a second marriage. The court held such marriage illegal and husband can be prosecuted for bigamy under section 494 IPC. This is the step which is going towards the Uniform Civil Code for Indian society.

All marriage shall be registered:

The Supreme Court of India has held that all marriage must be compulsorily be registered, irrespective of their caste and religion. ²⁷ The judicial attitude towards the Uniform Civil Code is a kind of several variants wherein it has responded to it in an indifferent way at different point of times. The judicial view in a case ²⁸ was not to test personal laws on the standard of fundamental right. It was affirmed by the Supreme Court of India in Ahmadabad Women Action Group case. ²⁹ Both these decisions made it clear that personal laws are not come within the preview of "laws in force" as given in Article 13(1) and so it cannot be tested on the touch stone of the constitution of India. ³⁰

But the Supreme Court of India in *Lily Thomas v. UOI* ³¹ observed that any direction for the implementation of Uniform Civil Code should not have been issued by only single judge as in *Sarla mudgal* case. In this case the Supreme Court of India finally observed that no court has power to give

¹⁹ A.M. Bhattacharjee, "Muslim Law and the Constitution", 2nd Ed., p. 177.

²⁰ 'The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India' (1985) 2 SCC, p. 556

²¹ 'The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India' ²³ AIR 1985 SC, p.935.

²⁴ AIR 2001 Supreme Court of India, p. 3262.

²⁵ AIR 2003, SC, p. 2902.

²⁶ (1995) 3 SCC, p. 635.

²⁷ The times of India, feb. 15, 2006.

²⁸ State of Bombay v. Narsu Appa Mali, AIR 1952, p. 84.

²⁹ (1997)3 SCC, p. 573.

³⁰ Mrs. Tejaswini S. Malegaonkar, "Uniform Civil Code – Issues and challenges", p. 186.

³¹ AIR 2000, Supreme Court of India, p. 1650.

direction for the implementation of the DPSP as given in Part IV of the Constitution of India and which include the Uniform Civil Code because DPSPs are not judicially enforceable. But according to Article 37³² of the Constitution of India state is bound to apply the principles contained in part 4 in making laws. Here we can say that if the govt. is failed to apply these principles then the court can direct it.

Again the govt. of India was directed in case of *John Vallamattom v. UOI*³³, that the Parliament has to enact a Uniform Civil Code for governing the personal laws of all the religious groups. Ultimately we can say that the Supreme Court of India has played its role very sincerely by directing the govt. to make a Uniform Civil Code for Indian society but it is the govt. that is competent to enact the Uniform Civil Code for citizens.

6. Uniform Civil Code and Gender Justice:

The Constitution of India by article 14³⁴ declares that there shall be equality before the law, it can be possible when there is a common law for all the citizens of India and they shall be on equal footing before the law. The Constitution of India has given equal right to women in respect of marriage, custody of children, separation, inheritance and property which is today understood as the justification for Uniform Civil Code³⁵. But till yet 60 years has been passed when Constitution of India came into force and the government of India is failed in unifying the personal law of the people. Equal right has to be given to women in matters of succession, marriage, separation, custody of children, inheritance in the property which is the foundation for a Uniform Civil Code. It is necessary to advance gender justice in today's modern developed society that even personal laws must be tested on the standard of the principle of fundamental right. The matters of personal laws based on religious freedom guaranteed by Article 25 of the Constitution of India, shall yield to the test of universal values of human dignity, gender justice and secularism.³⁶ By reading

Articles 14, 15, 21 and many other provisions of the Constitution of India the researcher comes on the point that in India there is equality of status and of opportunity and the state is duty bound not to discriminate between persons on ground only of sex etc.

6.1. Gender justice under Muslim Law

It may be said by little experience research that the Muslim women have no voice and no feelings relating to the issues concerning them. This is the case when it comes to the issue of gender justice this is the main issues which is highlighted again and again for several decades by the demand for making a Uniform Civil Code on matters of personal laws which will be applicable to all citizens of India³⁷. The women raised this issue, i.e. demanding Uniform Civil Code which has been taken over by men. Some people were feeling that the personal laws of the different communities including Muslim law are gender unjust and gave their opinion that gender justice is possible only through enacting Uniform Civil Code. The researcher states here the following situations which makes gender unjust for Muslim women. These are as follows-

1. Muslim men may marry with four women at a time which a women cannot. It is a very big hurdle in balancing gender justice and it is not possible without making a uniform law that binds a person not to marry more than one woman.

2. Muslim husband may dissolve the marriage by pronouncing 'talak' thrice at spot but Muslim women do not.

These are the few instances which show that there is unequal gender justice in Muslim Law. Now the Indian government has to take step for removing such type of inequality. It is to be noted here that there is mandate in our constitution under Article 44 that provides about duty of state to make a uniform law for all citizens of India irrespective of their caste, religion, sex etc.

6.2. Gender Justice under Hindu Law

Under the traditional Hindu law there were some differences among the persons belonging to Hindu religion. For example- the Hindu women had a very small right in relation to property, they had no right to become 'karta' in a family etc. Now the government of India has taken step to unify the Hindu personal laws and made Hindu law in 1955. These are as follows:

1. The Hindu Marriage Act, 1955

³² "The provisions contained in this part shall not be enforceable by any court, but the principle therein contained is nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."

³³ AIR 2003, SC, p. 2902.

³⁴ The state shall not deny the equality before the law and equal protection of the laws within the territory of India.

³⁵

<http://www.hindu.com/br/2007/05/29/stories/2007052900571500.htm>

³⁶ Mrs. Tejaswini S. Malegaonkar, "Uniform Civil Code – Issues and Challenges", Indian Bar Review, vol. 32 (1&2) 2005, p. 186.

³⁷ Sabeeha Bano, "Women's Voices: Expanding Gender Justice under Muslim Law".

Source; eco and pol weekly, vol. 30, no. 47 (nov. 25, 1995), pp. 2981-2982.

2. The Hindu Adoption and Maintenance Act, 1956
3. The Hindu Succession Act, 1956
4. The Hindu Minority and Guardianship Act, 1956

The state has enacted the above laws for the purpose of unifying the Hindu law relating to marriage, succession, adoption and maintenance and minority and guardianship. Now there is no doubt to say that all aspect of Hindu law has been codified. Since social reform is a piecemeal process, the appropriate step would be to make a small beginning and work towards an eventual codification of the entire body of the personal laws.³⁸

7. Implementation issues of Uniform Civil Code:

It is important to note here that the provisions of Muslim law governing the Muslims and other personal laws governing the other religious communities are discriminatory to each other. The researcher wants to give some illustrations³⁹ which make the communities different to each other and which are the big hurdle in unifying the personal laws:

1. The Muslims are polygamous while other communities are monogamous.
2. The Muslims can dissolve the marriage without interference of court while the other communities can affect divorce only with the intervention of the court.
3. Muslims beliefs that their whole laws are based on the Quran that was come through the Prophet and the words of Quran are of God and they don't want to change in their personal law.
4. The Muslim wife can be divorced by the husband at pleasure but the wife under other communities can be divorced on certain grounds specified and only through the court.
5. The divorced Muslim wife is not entitled to get maintenance after *iddat* period (controversial point) from the husband while other communities allow the divorced wife a permanent alimony.
6. Under Muslim law, a daughter inherits half the share of a son; under Hindu law, a daughter shares equally with a son.
7. A Muslim person cannot dispose of more than one-third of his properties by will while other personal laws do not impose such restriction.

8. Muslim law confers on person a right of preemption of any property of which he is co-sharer or an adjoining owner.

Conclusion:

On the basis of above analysis the author comes to the point that the Constitution of India is *sovereign, socialist, secular, democratic and republic* by its nature. There is one of the directives under the Constitution of India i.e. Uniform Civil Code which is the secular provision and provides "*The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India*". This provision is based on the idea that there is no crucial connection between religion and personal law. Article 25 of the Constitution of India guarantees the right to freedom of religion. It provides that subject to public order health and morality all persons have right to profess, practice and propagate religion. Article 44 is a secular provision which has been adopted to unify diverse personal laws of all the communities in one civil code. In fact, in India, maximum number of civil laws has been codified and applicable to all citizens irrespective of their caste, religion, race, sex etc. but unfortunately still it could not be possible for the reasons unknown to unite all the diverse personal laws. Equality is the constitutional goal and fundamental law of the country. The Uniform Civil Code is one of the mandates by which constitutional goal of equality can be possible by making a uniform law relating to personal matters of the communities in India.

Suggestions:

The researcher is giving following suggestions which may be helpful in enacting the Uniform Civil Code for all citizens of India:

1. Minority communities must be consented while enacting the Uniform Civil Code. To achieve this constitutional goal it is the obligation of all the sects of the society to make harmonious environment for the unity and integrity of India.
2. There should be an optional civil code for a period of time, it means to give people sufficient time to appreciate the new law and when substantial part is accepted by the people, it can be made compulsory.
3. There should be a gradual shift from diversified and unequal laws to a more complete code.
4. Article 44 of the Constitution of India imposes upon the state a duty to make the Uniform Civil Code; it means the duty is correlative of right. Here state's duty correlates with individual's right so individual's right must be protected and enforced by the court of law.

³⁸ Imtiaz Ahmad, "Personal Laws: Promoting Reform from Within", Economic and political weekly, vol. 30, no. 45 (Nov. 11, 1995), pp. 2851-285.

³⁹ A.M. Bhattacharjee, "Muslim Law and the Constitution", 2nd Ed., pp. 179&180.

5. The directive principle of state policy and fundamental rights are supplementary and complimentary to each other so judicial interpretation of Article 44 should be done with the help of Article 14, 15, 21 and 25 of the Constitution of India.

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