

Uniform Civil Code: Future of Personal Law

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ABSTRACT

In India, different religions are governed by their different personal. Where the process of reforming Hindu law has been a consistent effort of the legislature and the Courts, in form of the Hindu Code Bill, the Muslim law has largely remained outside the purview of legal or judicial reforms. The Muslim personal laws are essentially governed by custom in its substance and methodology. In effect to address the same issue, the Constitution of India provides for UCC as a goal of DPSP under article 44 as, "The state shall endeavor to secure for the citizens uniform civil code throughout the territory of India." So, this has been a long due issue that whether we should incorporate the Uniform Civil Code in India or not, and if we have to do it what would be the process and modality.

In India, different religions are governed by their different personal laws like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act for Hindus. However, the Muslims, the Parsis and the Christians are still governed by their own set of personal laws in some conditions. In effect to address the same issue, the *Constitution of India* provides that, "The state shall endeavor to secure for the citizens uniform civil code throughout the territory of India."¹

The issue arose that whether we should incorporate the *Uniform Civil Code* in India. Most notably, in the case of *Mohd. Ahmed Khan v. Shah Bano Begum*², the Supreme Court observed that, "A common civil codewill help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies." In the recently decided case of *ShayaraBano v. Union of India*, the Supreme Court by a majority of 3:2 held that the practice of instant unilateral divorce by way of 'Triple Talaq' is unconstitutional. Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority Judgment. Chief Justice Khehar and Justice Abdul Nazeer dissented.³

Earlier also, in December 2016, the Allahabad High Court termed the Islamic practice of divorcing a woman by saying the word talaq thrice i.e. 'Triple Talaq' as unconstitutional. The court observed that, "the Triple Talaq practice sanctioned under Muslim Personal Law that governs marriage, property and divorce of a Muslim couple, violates the rights of Muslim women".⁴

However, Syed Mohammad WaliRahmani, General Secretary of All India Muslim Personal Law Board (AIMPLB) and Maulana Syed Arshad Madani, President of JamiatUlema-e-Hind has defended the practice of 'Triple Talaq' basing their arguments on the point that, "it is better to divorce a woman than kill her". They also contended that the rights secured by religion cannot be questioned in a Court of law.

¹ Article 44, *Constitution of India*

² *Mohd. Ahmed Khan V. Shah Bano Begum*, AIR 1985 SC 945.

³ *ShayaraBanoV. Union of India*, (2017) 9 SCC 1

⁴ Available at: <http://indiatoday.intoday.in/story/uniform-civil-code-law-commission-chariman-religion-personal-laws-gender-justice/1/810271.html>, last accessed on March 22 2020.

Why Uniform Civil Code

India has maintained separate laws for the Hindu (Hindus, Buddhists, Jains and Sikhs), Muslim, Parsi and Christian communities, and also has a set of secular laws for inter-religious marriages⁵ and others who register their marriage under the same. There have been constant demands to reform and uniformly interpret and apply personal laws. Where the process of reforming Hindu law has been a consistent effort of the legislature and the Courts, in form of the *Hindu Code Bill*, the Muslim law has largely remained outside the purview of legal or judicial reforms. The Muslim personal laws are essentially governed by custom in its substance and methodology.

Even in light of criticism on grounds of being a primitive and archaic practice of the Islamic community, the governments have abstained from initiating legal reforms on the issues for they would risk being viewed in a negative light, since the community constitutes a large vote bank. The submission of the government was that these Islamic practices of polygamy had a social utility at the time they were introduced, but in the modern context, the same are not in consonance with the ideals of gender justice, when the same social utility is ensured by other facets of law.⁶

Where Problem Lies

India boasts of a large voter base and huge population of heterogonous people on language, culture, belief and religion separated by geography and economic status. India's assurance of making a welfare and secular state is evident in its commitments in the Constitution and the international conventions India subscribes to. People of the country have erroneously understood that discriminatory practices and a separate civil code relating to family and personal life is a facet

⁵ Available At: <http://www.hindustantimes.com/india-news/govt-imposing-single-ideology-in-uniform-civil-code-issue-muslim-law-board/story-yixTGpmXIEbTPeQvP6m6FN.html>, last accessed on March 20 2020.

⁶ Available at: <http://www.hindustantimes.com/india-news/govt-imposing-single-ideology-in-uniform-civil-code-issue-muslim-law-board/story-yixTGpmXIEbTPeQvP6m6FN.html>, last accessed on March 21 2020.

of their religious freedom. This has made implementation and enactment of a uniform family law difficult.

The UCC is something very much above the communal line, much above the Hindu-Muslim or majority-minority issue. The problem is that the orthodox bosses of the Muslim Personal Law board who claim to be the care taker and well-wisher of the whole Muslim community oppose the *Uniform Civil Code* on the ground of being communal and providing with means of oppression of the minority by the majority. The bitter truth is that they only want to continue the male dominated Muslim culture and do not want to eliminate the women discriminatory personal laws.

History of UCC

The issue of implantation of the UCC emerged way back during the British days. The East India Company (1757-1858) made substantial efforts to reform local, social and religious practices observed by different communities.⁷ It was later observed that the personal laws of Hindus and Muslims must be exempted from the codifications. Also, the power to apply personal laws was vested with the local courts and Panchayats so as to deal with the disputes between people regarding their religious rights and practices. The Britishers were of the view that India should be governed by the customary practices and scriptures followed by communities in those matters. Britishers were of the view that state intervention was only required in exceptional cases.

The Britishers were of the view that the domestic matters of Indians should be dealt by way of Self Governance and *the Queen's proclamation 1859* guaranteed the least interference of state in the religious matters like:

- The Personal laws contained the practices pertaining to marriages, religious rites, succession and law of Inheritance. However, the British and Anglo-Indian law regulated the matters of Public importance related to law of crimes, land disputes, contractual obligations and evidence.

Hindu Laws were enforced in the strict sense while enforcement of Muslim Personal laws which was largely based on the *Sharia Law* was not so strict when compared to the former one. As there was a rigorous religious procedure involved in it so there was no uniformity in applying the laws in lower courts. Ultimately, it was seen as a set of *the customary laws*, which was considered to be more discriminatory in nature against women. As provided by the *Sharia law*, women were not entitled to inherit the property and also they are not allowed for making settlements for the dowry related issues. It was mainly prevalent in Western and Northern part of the country. Continuous pressure from the Muslim Peer groups, led to the enactment of *the Muslim Personal Law (Shariat) Application Act, 1937* wherein it is contemplated that, "*all Indian Muslims would be governed by Islamic laws governing and regulating marriage, divorce, maintenance, adoption, succession and inheritance*".

⁷ Available at: <http://www.historydiscussion.net/british-india/social-and-economic-impact-of-british-rule-in-india/1595>, last accessed on March 26 2020.

Legislative Reforms

The then Prime Minister Jawaharlal Nehru in the year 1955 considered codifying Personal laws. However, he faced immense opposition from communities that were opposed to this very idea of codifying the personal laws. Thereafter, Nehru and other concerned personalities determined to get the personal laws codified summed up the situation by stating that, "*the Muslims were not prepared for changes*".⁸

Kripalani criticized the entire political situation and said that: "*It is not the Hindus who alone are communal; it is the government also that is communal, whatever it may imply. It is passing a specific legal reform in the form not passing a Uniform Civil Code. I label the government with communalism because the government is bringing forward a law about monogamy only for Hindu community. The Muslim community is prepared to have a Uniform Civil Code but you are not determined and brave enough to do it. If you (government) want to have (provision of divorce) for Hindu community, have it; but have it for the other communities also.*"⁹

Initially, *the Hindu Law* also discriminated against women by not providing them with a say in *inheritance, remarriage and divorce*. One of the prominent social reformers, Ishwar Chand Vidyasagar was of the view that such discriminatory customs should be done away from the society by means of legal reforms.¹⁰

The demand for equal rights for women has been raised from the ancient times in India. But due to ignorance by the Britishers, it led to an unwanted and prolonged delay in passing of laws as to ensure women of an equal status. A complete uproar and disappointment was shown against the male dominated legislature by the All India Women's Conference (AIWC) and Lakshmi Menon in 1933 articulated that "*If we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law. The members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be of benefit to us.*"¹¹ There was increasing demand for *Uniform Civil Code* by the women's organisation based on the resolution passed by the women's organisation in the Karachi Congress, thereby guaranteeing women of the gender equality.¹²

Later, B.N. Rau committee was constituted and assigned the task to come up with reform of laws for Hindus. It was because of the passing of *Hindu Women's Right to Property Act, 1937*. The committee had recommended that it is the appropriate time for enacting *Uniform Civil Code*. According to the committee it would ensure women equal rights in the

⁸ Available at: <http://www.tribuneindia.com/news/nation/muslim-outfits-dare-govt-on-civil-code/309386.html>, last accessed on March 26 2020.

⁹ Verinder Grover, *Political Thinkers of Modern India: J.B. Kripalani*, Deep & Deep Publications 1993.

¹⁰ Available at: <https://bharatabharati.wordpress.com/2016/07/31/perversion-of-secularism-and-the-non-implementation-of-a-uniform-civil-code-nithin-sridhar/>, last accessed on March 22 2020.

¹¹ Available at: <https://kafila.online/2014/10/01/uniform-civil-code-state-of-the-debate-in-2014/>, last accessed on March 25 2020.

¹² Available at: <http://www.revolutionarydemocracy.org/rdv9n2/southasia.htm>, last accessed on March 24 2020.

society as against men keeping in mind the trends of modern society. It cannot be ignored that that the main focus still remained on reforming the existing Hindu laws with relation to their religious rites and scriptures.¹³

The enactment which provided for the option of a civil marriage to Indian Citizens was enacted in 1872 namely *Special Marriage Act*.¹⁴ Initially, it had a limited application as it was only applicable to Hindus and other persons who had renounced their religion. Afterwards, the *Special Marriage (Amendment) Act, 1923* has been passed so as to allow the Hindus, Jains, Sikhs and Buddhists to marry without renouncing their own religion. It also allowed them to retain their succession rights.

UCC In Post – Independence Period

Notably, Jawaharlal Nehru in early times of Indian republic supported the concept of one single *Uniform Civil Code* for all the citizens throughout the territory of India. However, he was opposed by prominent leaders like Vallabhbhai Patel and Rajendra Prasad who were in support that the state should not interfere in this.

The Hindu Code bill was also criticized at the time of its enactment as the stakeholders wanted to do away with provisions of monogamy, divorce, provision of women's inheritance in the Hindu Undivided Family business, and the provisions of inheritance of family's property to daughters. They sought to retain the customary and traditional Hindu personal law.

Rajendra Prasad, then President, Sardar Vallabhai Patel and some other senior members of the Indian National Congress, and Hindu fundamentalist parties were all opposed to these reforms in the country and called the Hindu Code Bill a delaying tactic rather than a complete rejection to the idea of a uniform civil code. Women legislators in the Parliament initially supported this stance of the senior leaders and political parties, but later, apprehensive of a fundamentalist approach to the law as taking away many of the rights available to women, came out in favor of the Hindu Code bill and backed the required Hindu law reforms.¹⁵

This inclusion of Article 44 to enforce *Uniform Civil Code* was deemed to be a delaying tactic and was showed opposition by women members like Rajkumari Amrit Kaur and Hansa Mehta. According to Paula Banerjee, the inclusion of UCC under directive principles instead of making the law was in effect that the enactment of *Uniform Civil Code* would be delayed and now not to be implemented. Adding on, Aparna Mahanta contented that, "*Failure on the part of Indian government to provide with a Uniform Civil Code is not in consonance with the democratic, secular and socialist declarations made out; it furthermore clears the modern state's*

accommodation of the traditional interests of a male dominant society".¹⁶

Present Need & The Way Forward

The contemporary Indian political debate is largely concerned with the law as it stands after such to and fro upheaval. The issues of implementation of a uniform civil code are mainly asserted by the country's largest minority, which itself is diverse on caste, regions and linguistic, cultural grounds.

Women's rights groups claim that "*this issue is only based on their rights and security, irrespective of its politicisation*". The arguments for it are:

- Article 44 mandates state effort towards the uniformities of the civil code for the entire country.
- Integrity of the country demands that such a legal position is upheld.
- A claim of different religious laws needs a stronger argument that a mere propagation of outdated and medieval religious mandates.
- The requirements of equality and liberty demand gender equality and upliftment (in divorce which should not be unilateral and instant), and reform in all laws of the country (which cannot be held to be exclusive of the parallel Muslim law and custom).

There have been several cases at the Supreme Court which have called the attention of the legislature for a fresh look on the matter of uniform civil code throughout the territory of India.

From the ongoing discussion it may be concluded that mainstream India is in need of a uniform civil code so as to bring about the uniformity in matters of family laws and to do away with all the discriminatory practices of the personal Laws. The Uniform Civil Code would carve a harmony between protection of fundamental rights and religious ideology of people. The Uniform Civil Code can be effectively presented simply in the wake of accomplishing enhanced levels of proficiency, awareness on different socio-political issues, edified dialogs and expanded social portability. A definitive point of improving uniform common code ought to be for guaranteeing equity, solidarity and integrity of the country and equity both men and women.

When the nation can have a *Uniform Civil Code*, then it can also have a uniform civil code. The makers of the constitution thought that it was not the time to implement the same so UCC was included as a DPSP.

The Indian government took a bold step in 1955 and even after facing a lot of criticism and opposition from certain section of the community, it codified Hindu Laws and the result and benefit is visible in front of all, but even the then Indian government thought the same could not be done with reference to personal laws of other religious communities.

But now the time has come that the government should think above polarisation and communal and secular politics.

¹³Paras Diwan, *the Uniform Civil Code: A Projection of Equality in Mohammad Imam*, pg. 420.

¹⁴*Special Marriage Act, 1872*

¹⁵ Available at: <http://lawjournalindia.in/uniform-civil-code-an-equilibrium-of-laws-religions/>, last accessed on October 25 2017.

¹⁶ Available at: <http://lawjournalindia.in/uniform-civil-code-an-equilibrium-of-laws-religions/>, last accessed on October 25 2017.

The people of the country as an Indian should think above the UCC as a communal issue, rather it is a step forward in making the country secular. So UCC shouldn't be considered as an issue of polarisation or caste or religion politics, but it is necessary evil for the society, for the women, for the anti feminist orthodox practices.

People should clear a misconception which they carry that UCC will take their way or procedure of marriage or divorce or adoption, etc. No it is not at all like this. UCC is only an attempt to do away with the women discriminatory practices which the women are facing since time immemorial just for the name of sacredness or religious practice.

Implementation of a UCC will promote justice to divorced or deserted women, gender equality in family and married life, and be useful in national integration of civil laws. The ideals of unity and integrity of the nation, the dignity of the individual can only be held paramount by the implementation of a uniform civil code in matters concerning family, marriage, guardianship and adoption. The benefits of having a uniform civil code far outweigh the costs.

Prof. Faizan Mustafa has correctly summarised about the prospects of the *Uniform Civil Code* as, "*UCC is desirable for transition or legal reform of religious personal laws of different communities. However, the same is not a sudden change that should be brought up; rather it should be reform of personal laws taken over a long period of time to be effective as it would yield better results if implemented in phases and would be socially acceptable. Essentially, the policy of the government is not to interfere in any community's personal laws unless a demand is made for reforms from concerned communities*".¹⁷

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¹⁷ Prof. Faizan Mustafa, I Favour Uniform Civil Code in A Piecemeal manner, January 24 2017; Available at: <http://www.livelaw.in/favour-uniform-civil-code-piecemeal-manner-interview-nalsar-vc-prof-faizan-mustafa/>, last accessed on March 29 2020.