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With this thought, we hereby present to you

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UNIFORM CIVIL CODE IN INDIA: A CONSTITUTIONAL PERSPECTIVE

AUTHORED BY - SOUMYA LENKA

ABSTRACT

From the very day the Constitution of India came into force, the voice from different corners of society for making Uniform Civil Code (UCC) was raised time and again and it has now gained momentum. The following article is an authenticated attempt to have a comprehensive analysis at the origin, scope and different facets concerning the formulation and implementation of Uniform Civil Code in a country like India. Research Methodology: The author has employed doctrinal research methodology thereby making use of the existing qualitative data. The study primarily focuses its attention on decoding the purpose of the Constitution makers behind inculcating the provision for a Uniform civil code in the Constitution through constitutional assembly deliberations, standpoint of the apex court with regard to the issue by visiting several notable verdicts and the suggestions of 21st law commission. Efforts are also made to put forth the merits of a Uniform Civil Code and also the challenges concerning its effectuation. The present study aims to delve deeper into the socio-legal complexities surrounding the issue of a Uniform Civil Code with certain suggestions which can facilitate a smooth implementation. The article is of the opinion that a Uniform Civil Code by the Parliament of India should not be an imposing endeavour on various religious communities in India. In case it is enacted, it should be enacted in high consultation with and opinion sought from all corners of society including religious gurus, legal experts, NGOs, social activists and politicians from every community so that a harmonious environment is created to promote welfare of members of every community along with the noble concept of national integrity.

Keywords: Uniform Civil Code, Constitutional Mandate, Triple Talaq, Constituent assembly, Personal law

[A]INTRODUCTION

Uniform Civil Code or UCC refers to a single personal law for all citizens irrespective of religion, sex, gender and sexual orientation.¹ Since Independence there's been talk of a Uniform Civil Code for the country. The constitution has a provision for Uniform Civil Code in Article 44² as a Directive Principle of State Policy which states that “*The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India*”. A uniform civil code will mean a set of common personal laws for all citizens. Personal law covers a plethora of subjects like property, marriage and divorce, inheritance and succession.³ Currently, there are different personal laws for Hindus and Muslims like the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Dissolution of Muslim Marriage Act, 1939 etc. The primary aim of UCC is to form a single codified civil law by diluting these personal laws, thereby creating uniformity with regard to the personal laws of the citizens.

[B]VIEWPOINT OF THE CONSTITUTION MAKERS

To have a comprehensive understanding of the purpose behind inculcating a provision for Uniform civil code, it is nevertheless important to revisit the very minds of our constitution makers through Constituent Assembly deliberations. The issue of a Uniform Civil Code was debated vigorously in the Constituent Assembly after Independence. The country was witnessing the tragedy of Partition at that time. The large-scale communal violence had created an atmosphere of mistrust. Implementing a Uniform Civil Code in the country was a challenge.

On November 23, 1948, the issue of UCC was raised for the first time in the Constituent Assembly. It was proposed by Congress's Meenu Masani, a member of the Constituent Assembly from Bombay (now Mumbai), leading to a vigorous and expansive debate on the subject. At that time, UCC figured under Article 35.

¹ Soutik Biswas, *UCC: The coming storm over a single common law in India*, BBC (Jan 2, 2024, 05:30 PM), <https://www.bbc.com/news/world-asia-india-61589491>

² INDIA CONST. art. 44

³ Krati, *Uniform Civil Code*, LEGAL SERVICE INDIA (Jan. 2, 2024, 05:30 PM), <https://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html>

[B.1] Leaders in approbation of UCC

The Uniform Civil Code first got support from women members. There were 15 women members in the Constituent Assembly. Hansa Mehta was among these 15, and she lobbied for a UCC as a member of the Fundamental Rights Sub-Committee.

Apart from them, Rajkumari Amrit Kaur, Dr Bhimrao Ambedkar, Meenu Masani, Kanhaiyalal Maniklal Munshi, Alladi Krishnaswami Iyer vociferously supported the implementation of a UCC and argued strongly in its favour. Almost the entire Congress, including then Prime Minister Jawaharlal Nehru, was also in support of a UCC.⁴

B R Ambedkar while giving a reply to Mr Hussain Imam, a member of the constituent assembly said that: “*My friend, Mr Hussain Imam, asked whether it was possible and desirable to have a uniform code of laws for a country so vast as this. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts, and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country.*”⁵

He further observed in another deliberation that “*It [Article 35] does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens.*” He also said it is “*perfectly possible*” that the future Parliament may in the beginning make a provision that the Code shall apply only to those who declare that they are “*prepared to be bound by it*”. In other words, initially, the “*the application of the Code may be purely voluntary.*”⁶

⁴ Ramesh Sharma, *What framers of our Constitution said about UCC and why they didn't implement it*, INDIA TODAY (Jan.2,2024, 06:00PM), <https://www.indiatoday.in/nation/story/uniform-civil-code-what-framers-of-our-constitution-said-about-ucc-constituent-assembly-debates-2402758-2023-07-07> .

⁵ H.V Hande, *Uniform Civil Code, as conceived by Dr B R Ambedkar*, THE NEW INDIAN EXPRESS (July. 28,2023 12:40 AM), <https://www.newindianexpress.com/opinions/2023/jul/28/uniform-civil-code-as-conceived-by-dr-b-r-ambedkar-2599259.html>

⁶ S.N Sahu, *What Ambedkar really said about Uniform Civil code*, NEWS CLICK (Jan.2,2024, 06:00PM), <https://www.newsclick.in/what-ambedkar-really-uniform-civil-code>

KM Munshi observed that “I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.” He further said that “There is one important consideration which we have to bear in mind—and I want my Muslim friends to realise this—that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation.”⁷

Alladi Krishanaswami Ayyar observed that “A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

“The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters.”⁸

[B.2] Leaders in disapprobation of UCC

Mohammad Ismail, a member from Madras (now Chennai), was the first to oppose a UCC in the

⁷ Brian Carvalho, *Ambedkar backed a UCC, in future Code may be "purely voluntary" to begin with*, FORBES INDIA (Jul. 5, 2023 01:07 PM), <https://www.forbesindia.com/article/news/ambedkar-backed-a-ucc-in-future-code-may-be-purely-voluntary-to-begin-with/86361/1>

⁸ *Id* at 4.

Constituent Assembly. Ismail was part of a group of five Muslim members, which included Naziruddin Ahmed, Mehboob Ali Baig, B Pokar Saheb, and Ahmed Ibrahim, that brought an amendment against the UCC. Apart from this, Urdu poet Maulana Hasrat Mohani, who gave the slogan of 'Inquilab Zindabad', also took part in the debate and opposed the UCC.⁹

Mahboob Ali Baig Sahib Bahadur observed that: *"My view of article 35 is that the words 'Civil Code' do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: Laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression 'Civil Code', I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion."*

Naziruddin Ahmad, said that: *"...each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that '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.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that 'Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), viz. financial,*

⁹ *Id.*

political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19.”

[B.3] Compromise

From its original slot under Fundamental Rights (Article 35), the pioneer lawmakers settled for a compromise and let the UCC slip into the Directive Principles of State Policy(Article 44)¹⁰ owing to the socio-political realities of that time.

[C]VIEWPOINT OF THE SUPREME COURT

When we study certain decided cases, it is found that the judiciary has expressed its opinion in favour of enactment of Uniform Civil Code in pursuance of Art. 44 of the Constitution.¹¹

[C.1]Mohd Ahmed Khan v. Shah Bano Begum(1985)¹²

The first time that the courts urged the adoption of a uniform civil code was when the Supreme Court in Mohd Ahmed Khan v. Shah Bano Begum and Others exhorted the central government to enact a “common civil code”. During the Shah Bano case, the Supreme Court held that “*It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.*” It emphasised that “*A common Civil Code will help the cause of National Integration by removing disparate loyalties to law which have conflicted ideologies.It is the State which incharged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A beginning has to be made if the Constitution is to have any meaning.*”

[C.2]Jordan Diengdeh v. S. S Chopra(1985)¹³

In this case, the Supreme Court argued for an “immediate and compulsive need for a Uniform Civil

¹⁰INDIA TODAY, <https://www.indiatoday.in/nation/story/uniform-civil-code-what-farmers-of-our-constitution-said-about-ucc-constituent-assembly-debates-2402758-2023-07-07> (last visited Jan. 02,2024).

¹¹ Dr. Sankalp Singh, *Feasibility of Uniform Civil Code in India within Modern Legal Horizon and Constitutional mandate: A Critical Appraisal*, DHARMASHASTRA NATIONAL LAW UNIVERSITY (Jan. 2,2024, 07:30 AM),<https://www.mpdnl.ac.in/assets/pdf/10.%20Feasibility%20of%20Uniform%20Civil%20Code%20in%20India%20within%20Modern%20Legal%20Horizon%20and%20Constitutional%20Mandate.pdf>

¹²Mohd Ahmed Khan v. Shah Bano Begum,1985 (3) SCR 844(India).

¹³ Jordan Diengdeh v. S. S Chopra, 1985 AIR 935(India).

Code”, and observed as follows: *“Time has now come for the intervention of the the legislature to provide for a uniform code of marriage and divorce as envisaged by Article 44.”*

[C.3]Sarla Mudgal and Others v. Union of India(1995)¹⁴

Justice Kuldeep Singh, while delivering this judgement in the case reprimanded the for failing to make any effort towards Uniform Civil Code. He remarked that *“When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of Uniform Civil Code.”*

[C.4]John Vallamatom and Anr v. Union of India(2003)¹⁵

The Supreme court has affirmed the necessity of framing a Uniform Civil Code in the case in the context of succession laws. The Court reiterated the sentiment of the previous cases: *“It is a matter of regret that Art. 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”*

[C.5]Shayara Bano v. Union of India(2017)¹⁶

In 2017, in the case which is commonly known as the ‘Triple Talaq Case’, the Supreme Court stated: *“All this leads to the clear understanding, that the Constitution requires the State to provide for a uniform civil code, to remedy and assuage, the maladies expressed in the submissions advanced by the learned Attorney General.”*

[C.6]Jose Paulo Coutinho v. Maria Luiza Valentina Pareira(2019)¹⁷

In 2019, a bench of the Supreme Court, comprising of Justice Aniruddha Bose again expressed its disappointment over lack of Uniform Civil Code, saying: *“Whereas the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil code throughout the territories*

¹⁴ Sarla Mudgal and Others v. Union of India, AIR 1995 SC 1531(India).

¹⁵ John Vallamatom and Anr v. Union of India, AIR 2003 SC 2902(India).

¹⁶ Shayara Bano v. Union of India, (2017) 9 SCC 1(India).

¹⁷ Jose Paulo Coutinho v. Maria Luiza Valentina Pareira, (2019) 20 SCC 85(India).

of India, till date no action has been taken in this regard.”¹⁸

[D]21ST LAW COMMISSION REPORT (2018)

The 21st Law Commission, headed by former Supreme Court judge Balbir Singh Chauhan, held that the “*formulation of a Uniform Civil Code is neither necessary nor desirable at this stage*”. Its recommendations were far-reaching. The Commission had commented, “*Mere existence of difference does not imply discrimination, but is indicative of a robust democracy*”.¹⁹ The 21st Law Commission promoted reforms in family laws of different religions over the UCC, *pointing to the dangers of forcing uniformity*.²⁰ In its 185-page consultation paper, the commission maintained that to preserve the cultural and social fabric of the nation we need to protect and preserve diversity and plurality. It urged that the legislature should first consider guaranteeing equality ‘within communities’ between men and women, rather than ‘equality between’ communities. It suggested that in this absence of consensus on UCC, the best way forward is to protect and preserve the diversity of personal laws. Along with this, they should balance all personal laws against the fundamental rights guaranteed in the Constitution.²¹

[E]MERITS OF UNIFORM CIVIL CODE

- ◆ Uniformity in law would be ensured to all the citizens of India irrespective of their distinct religions. Such uniformity would not have any adverse effect on Fundamental Right to Religion guaranteed under Arts. 25 to 28 of the Constitution. For example, family matters of all the communities like marriage, maintenance, custody of children, divorce, succession, etc. can be dealt with by uniform law.

¹⁸ORGANISER, <https://organiser.org/2023/07/18/184297/bharat/uniform-civil-code-revisiting-supreme-court-verdicts/> (last visited Jan. 2, 2024).

¹⁹ Flavia Agnes, *Law Commission’s report on Uniform Civil Code — undesirable and unnecessary*, THE INDIAN EXPRESS (June. 23, 2023, 04:03 PM), <https://indianexpress.com/article/opinion/columns/law-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/#:~:text=In%20the%20paper%2C%20the%2021st,Its%20recommendations%20were%20far%2Dreaching.>

²⁰ Poornima Joshi, *The case against Uniform Civil Code*, THE HINDU BUSINESS LINE (June 29, 2023, 09:29 PM), <https://www.thehindubusinessline.com/opinion/the-case-against-uniform-civil-code/article67024396.ece>.

²¹ Rachit Garg, *Challenges of a Uniform Civil Code*, IPLEADERS (Sept. 7, 2022, 07:30PM), <https://blog.ipleaders.in/challenges-of-a-uniform-civil-code/>

- ◆ Certainty of law with uniformity regarding family matters may be the result of such Code. People of all the communities would become sure that law is certain and there is little scope to distort it by any person according to his whims and fancies.
- ◆ It is sure that the law of compulsory registration of marriage would prevent many evils e.g. child marriages, bigamy, polygamy, denial of marriage by husband, etc. and the legally wedded wife with registration of her marriage would be sure that such evils will not happen in her marriage life.
- ◆ Ideologies of different religions and right to practise and propagate religions of any person would not come in the way of framing of Uniform Civil Code because religious ideologies and right to religion stand on different footing than a Uniform Civil Code because a Uniform Civil Code is completely a secular matter.
- ◆ The concept of national integrity is bound to be enhanced with a Uniform Civil Code coming into effect as the secular character of the country would be promoted and welfare of all the 162 communities would be brought within a single domain of law i.e. Uniform Civil Code.
- ◆ Law will be simplified with the Uniform Civil Code being enacted. All the provisions of it would be lucid and free from ambiguity.
- ◆ The concept of gender justice would be ensured and promoted. Married women would have a sense of equality in their mind while living with their respective husbands. A married woman would be free to a large extent from ugly behaviour of her husband and absolute dependence on him as she would not live on mercy of her husband. She would have every right to live with human dignity.
- ◆ A wife will surely feel that she is not living in a patriarchal society. She may feel that she is living in such society where no male member including her husband can oppress her or inflict torture on her because in all the respects she lives at par with her husband.

[F]CHALLENGES

[F.1] Religious Minorities

The minority communities often see UCC as an attempt to interfere with their religious freedom and argue that implementation of UCC will hinder their right to religion enshrined in Article 25 of the Indian Constitution. The Muslim community often sees themselves as the target of the UCC. The All-India Muslim Personal Law Board asked the law commission "why only Muslims were not being

exempted from the proposed UCC when the government is ready to exclude tribals." This is a clear manifestation of the fact that Muslims still see themselves as the "target group" of UCC.

This is a challenge that is very difficult to overcome but needs to be overcome for the smooth implementation of UCC. The argument that the UCC will violate the Right to freedom of religion is a false notion. The Supreme Court had coined the essential religious practice test in the case of *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt*,²² According to this test, only essential religious practices shall be protected by Article 25. Many secular practices may be considered an essential part of religion. However, such notions might, in reality, be superstitious and not essential to religion; hence, they shall not be protected by the Constitution of India.

The UCC indeed seeks to deal with secular aspects that are not essential to religion, and this means that these secular aspects are not protected by Article 25. Minority communities should be made to understand the same. Article 25 clause (2) subclause (b) provides an exception to Article 25. It states that if any law advocates for positive reform and social welfare, then the operation of this Article shall not be affected.

India has 17 crore Muslims. Even though it may seem like a large number, they are still a minority community in India. The Muslim community feels that the implementation of the UCC will be a threat to their distinct religious practices. They feel that the implementation of the UCC will homogenize society and interfere with their religion.

[F.2] Tribal Areas

The Uniform Civil Code, even if implemented in India, may not apply to some parts of Northeastern India. According to Schedule 6 of the Indian Constitution, unless and until the state legislatures of Assam, Meghalaya, Tripura, and Mizoram ratify the center's decision, it shall not be applicable to some tribal areas of these states.

²² The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt, 1954 AIR 282(India).

This is why their views must be considered if the UCC is to be applied to these states. Article 371A and 371G also exclude the applicability of a parliamentary law on customary practices unless the legislatures of Nagaland and Mizoram give their approval. This necessitates a consensus among all the communities about the various provisions, taking into consideration the practices and beliefs of different communities.

[F.3] Legal Complexities

Article 44 does not clearly explain how the Uniform Civil Code should be made. The Supreme Court has given many judgments that have asked the government to enact a 'common civil code' and mentioned the necessity of it. However, even the court has no idea how this civil code should be framed.²³

[G] CONCLUSION AND SUGGESTIONS

Despite cultural-religious diversity and plurality, our unity is a rich heritage for the national integrity and promotion of secularism with basic objective to ensure welfare and wellbeing of every citizen of India. Guaranteeing Fundamental Right to Religion in the Constitution of India under Arts. 25 to 28 is another laudable step to strengthen integrity and unity of the country. Nevertheless, different legislations e.g. the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Muslim Personal Law (Shariat) Application Act, 1937 are there to deal with family matters differently. Certain religious sacraments are also required to supplement these laws and in one way or another they have been incorporated in such legislations. To illustrate, it can be said that conditions and laws relating to marriage, divorce, adoption, guardianship, and maintenance are not similar. Again, rules relating to inheritance in all the religious communities stand on different footings. Rules in respect of bequeath are also different. Fundamental Rights to Religion available to all the persons in India as enshrined under Constitution are the same but religious ideologies are distinct for them. Incorporation of provision regarding Uniform Civil Code under Art. 44 of the Constitution by framer of the Constitution under DPSP is a constitutional mandate for enactment of a Uniform Civil Code. Expression of opinion by the Supreme Court in several cases for

²³ Abha Ajikumar, *Uniform Civil and the Challenges In its Implementation*, LEGAL SERVICE INDIA (Jan.2,2024, 08:00PM), <https://www.legalserviceindia.com/legal/article-14040-uniform-civil-and-the-challenges-in-it-s-implementation.html>.

treating the Uniform Civil Code as a secular matter and not a religious matter is indicative of framing a Uniform Civil Code in India. Further, the opinion of the Supreme Court that framing a Uniform Civil Code would be a step to strengthen national integrity is extremely relevant on the issue. Protection of equality in matrimonial status, eradication in gender inequality and sense of security are such other issues which are common to all the religious communities.²⁴

In view of the above discussion, it is submitted that enacting a Uniform Civil Code by the Parliament of India should not be an imposing endeavour on various religious communities in India. In case it is enacted, it should be enacted in high consultation with and opinion sought from all corners of society including religious gurus, legal experts, NGOs, social activists and politicians from every community so that a harmonious environment is created to promote welfare of members of every community along with the noble concept of national integrity.



²⁴ Dr. Sankalp Singh, *Feasibility of Uniform Civil Code in India within Modern Legal Horizon and Constitutional mandate: A Critical Appraisal*, DHARMASHASTRA NATIONAL LAW UNIVERSITY (Jan. 2,2024, 07:30 AM),<https://www.mpdnl.ac.in/assets/pdf/10.%20Feasibility%20of%20Uniform%20Civil%20Code%20in%20India%20within%20Modern%20Legal%20Horizon%20and%20Constitutional%20Mandate.pdf>