

CRITICAL ASPECTS AND CHANGES OF UNIFORM CIVIL CODE IN INDIA

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Abstract

*The issue of the **Uniform Civil Code** has emerged into India's political discourse recently mainly because many Muslim women, affected adversely by the personal laws, have begun knocking on the doors of the Supreme Court to uphold their fundamental rights to equality and liberty in keeping with constitutional provisions. The **Union law ministry** has recently asked the law commission to examine the matters in relation to the implementation of the uniform civil code.*

Introduction

The **Uniform Civil Code (UCC)** in India proposes to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. The constitution has a provision for Uniform Civil Code in Article 44 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."

Need For Uniform Civil Code In India

However, after 66 years of the adoption of our Constitution, UCC remains to be a constitutional dream to be fulfilled. The judiciary has time and again reminded the legislature the need to have a UCC through its various judgments.¹⁶ the need for uniform civil code has been felt for more than a century. India as a country has already suffered a lot in the absence of a Uniform Civil Code. The society has been fragmented in the name of religions, sects and sex. Even at present, in India, there are different laws governing rights related to personal matters or laws like marriage, divorce, maintenance, adoption and inheritance for different communities. The laws governing inheritance or divorce among Hindus are thus, very different from those pertaining to Muslims or Christians and so on. In India, most family law is determined by the religion of the parties concerned Hindus, Sikhs, Jains and Buddhists come under Hindu law, whereas Muslims and Christians have their own laws.

Muslim law is based on the Shariat; in all other communities, laws are codified by an Act of the Indian parliament. The multifarious castes and creeds and their sets of beliefs or practices

The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. India has set before itself the ideal of a secular society and in that context achievement of a uniform civil code becomes more desirable. Such a code will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society. It will create a national identity and will help in containing fissiparous tendencies in the country. The uniform civil code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters.

According to the Committee on the Status of Women in India, "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code.¹⁸

India's civil code is different only on the topics of personal law (ie- family law)- Marriage, Divorce, Alimony, Succession, and inheritance.

If you notice in all these topics, If person A governed by a different personal law than person B, there is no possible way in which A's personal law can affect B(Except for B's ego). So if one community traditionally has certain customs, the personal law for them has been framed to fit those customs.

Yes if you are jumping to the topic of personal freedom and cross religion marriages. Any Indian is free to marry under the Special marriage act of 1954 (which is the most progressive of India's civil codes, the default of many smaller communities such as Christians, and almost identical to the Hindu Marriage Act)

As the community matures, its personal law can be amended to become more progressive. (And the Hindu personal law is very progressive now because it was amended by the Hindu Marriage act of 1955, based on the very progressive Special Marriage act of 1954) Similarly the Muslim personal law requires some amendments from within the community as we are currently following a very old act which does not keep pace with the current standards of gender equality.

India has a diverse personal law because our culture and tradition is diverse. Some cultures follow different systems of inheritance (the law takes that into account), some follow

different ones in marriage (the law takes that as well) you can see the different personal laws in the link below.

A uniform civil code is a nice ideal, if the population is uniform enough. But as long as the personal law for each community is amended to the standards of the constitution and does not infringe on the rights of other communities, we should embrace our differences. (Similar to the argument to declare a national language. It would be nice to have a common tongue in India, but it is nicer to embrace the diversity that we have)

Now why is the Uniform Civil Code such a hot topic?

The UCC is a topic that has been misused by one political party to target its favourite communal enemy and appear progressive at the same time.

It is a master political move, allowing them to take a moral high stand (since the Hindu Marriage act is progressive in gender equality while the Muslim marriage act is not). It also allows that party to incite fear in people who do not understand the act by making them believe that the current law favors one community more than the other. Let me re-iterate that **If person A is governed by a different personal law than B, there is no possible way in which this can affect person B.**

Changes in UCC

To provide equal status to all citizens

In the modern era, a secular democratic republic should have a common civil and personal laws for its citizens irrespective of their religion, class, caste, gender etc.

To promote gender parity

It is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par.

To accommodate the aspirations of the young population

A contemporary India is a totally new society with 55% of its population is below 25 years of age. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity. Their view of shedding identity on the basis of any religion has to be given a serious consideration so as to utilize their full potential towards nation building.

To support the national integration

All Indian citizens are already equal before the court of law as the criminal laws and other civil laws (except personal laws) are same for all. With the implementation of Uniform Civil Code, all citizens will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

To bypass the contentious issue of reform of existing personal laws

Existing personal laws are mainly based on the upper-class patriarchal notions of the society in all religions. The demand of UCC is normally made by aggrieved women as a substitute for existing personal laws as patriarchal orthodox people still deem the reforms in personal laws will destroy their sanctity and oppose it profusely.

Conclusion

The Concept of a Uniform Civil Code is nice, but it is not a matter of importance. On the contrary, it would be a sudden and drastic change in personal law of many communities without doing any real good in the process. The Muslim Marriage Act does indeed require amendment and reform. Perhaps sometime in the future if all the acts have been amended to almost the same points, a Uniform Code can be introduced without any drastic change for any community.

Family law is built on tradition, and tradition can only be changed from within the respective communities. Do it from outside by standing on a moral high-horse and you will only create resentment? Process, which preserves India's rich legal heritage, of which all the personal laws are equal constituents. The codification and implementation of UCC may not necessarily usher in the expected equality among genders and religions. Major sensitization efforts are needed to reform current personal law reforms which should first be initiated by the communities themselves. Current institutions need to be modernized, democratized and strengthened for this change. Sincere efforts towards women empowerment have to be taken for all women of all religions. The plural democracy is an identity of the modern India. Therefore, efforts should be focused on harmony in plurality than blanket uniformity for flourishing Indian democracy.

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