

## EXAMINING THE FEASIBILITY OF IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA

**Dr. Denkila Bhutia**

Assistant Professor, Department of Law, Sikkim University, (A Central University)  
Gangtok, Sikkim

### Abstract

Uniform Civil Code is viewed as a panacea to achieve a just society and to end the unjust personal laws. Since the past many decades' discussion and debate on the adoption of uniform civil code have been going on however, it has not resulted into achieving the desired goals. There has been no proper roadmap or a blueprint towards implementation of uniform civil code. Thus, the paper attempts to examine that first and foremost the need of the hour is to prepare a draft on uniform civil code and have a debate and discourse by involving the stakeholders and civil society members.

Keywords: Uniform Civil Code, Constitution, Gender Equality.

### INTRODUCTION

Many countries in the world have common laws that are in perfect harmony with freedom of religion and worship for people with different beliefs (Raina, 1996). India is a diverse country where people of all faiths and beliefs live peacefully alongside one another. Hindus, Muslims, Christians, Parsis etc., are governed by their own personal law which is diverse from one another (Sharma, 1985). In India religion has become the most distinctive component of cultural diversity as a result of these personal laws (John, 1998). This division according to religion is despite the presence of Article 44 of the Constitution.

There is no denying the fact that India's diversity distinguishes it from other countries but it can also lead to conflicts at times. Thus, India needs a uniform civil code because the personal laws of different religion are always in conflict. Further, having a uniform civil code is good for the unity of the country and for the supremacy of the Constitution.

### UNIFORM CIVIL CODE UNDER ARTICLE 44

Keeping in view the interest of the nation, the makers of the Constitution incorporated article 44 in the Constitution which provide for the establishment of uniform civil code (Deshta, 2002).

The idea was unification of civil laws and to have a one law for every citizens of the country (Qamar, 2005). After extensive deliberation in the Constituent Assembly, the uniform civil code was added to Part IV, i.e., Directive Principles of State Policy. The fundamental idea behind article 44 is the unification of civil laws. The objective of a uniform civil code is to convert heterogeneous society into homogenous one.

Article 44 of the Constitution does not direct any law-making body to enact a uniform civil code straight away. It only provides that the state shall make an effort towards enacting a uniform civil code (Singh, 1994). Article 44 of the Constitution states that “the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. The intention behind including the said article is to establish a uniform legal framework to regulate all interpersonal relationships by a uniform system of laws. Uniform civil code may be defined as a single code that applies uniformly to all family civil matters irrespective of religion of an individual (Humtsoe, 2022). When religion does not come in the way of application of laws within the domain of the family matters e.g., marriage, maintenance, divorce, guardianship, inheritance, etc. is the purpose of the concept of a uniform civil code.

## **UNIFORM CIVIL CODE: RESPONSE TOWARDS IMPLEMENTATION**

### **RESPONSE OF THE GOVERNMENT**

In 1963, the first initiatives towards uniform civil code were taken by the then government by setting up a committee to examine how other muslim countries were handling the issue of family law reforms (Noorani, 1991). However, these efforts of the government were unable to become a reality. The government had also stated that muslim personal law would not be changed until a desire for change came from the community themselves.

In 1986, the then Prime Minister of the country had made efforts towards adoption of uniform civil code and the law ministry was instructed to draft a uniform civil code and to place it before the Parliament. Further, the law ministry had been instructed to deliberate and take the views and suggestions of academicians, political parties, scholars and the press and prepare the draft. However, this initiative also had failed to yield the anticipated result.

Thereafter in 2014, when Bharatiya Janata Party (BJP) came into power and the discourse on uniform civil code revived again. Uniform civil code has been a part of BJP’s manifesto since the

inception of the party as it is viewed as a panacea towards achieving gender equality. Thus, in 2016 the government had asked the Law Commission to examine the feasibility of adoption of 'one law, one nation'.

## RESPONSE OF THE JUDICIARY

The Apex court and the high courts have in some cases discussed the desirability of the adoption of a uniform civil code. In *Mohd. Ahmed Khan v. Shah Bano Begum & Ors*, (Mohd. Ahmed Khan v. Shah Bano Begum & Ors, 1985) for the first time the Supreme Court responded to the constitutional requirement of having a uniform civil code. In this case, the court had observed that a common civil code will facilitate towards integrating the nation and had directed the Parliament to outline a common civil code.

In *Jordan Diengdeh v. S.S. Chopra*, (Jordan Diengdeh v. S.S. Chopra, 1985) the judgment begins with a reference to Shah Bano and an emphasis on the urgency of infusing life into Article 44. The court observed that "the lack of a uniform civil code is described as a "totally unsatisfactory state of affairs". The court held that it is time to reform the law of marriage and to enact a uniform law that will govern everyone without any distinction on the basis of caste or religion.

In *Sarla Mudgal v. Union of India*, (Sarla Mudgal v. Union of India, 1995) the court stated that it seemed like the rulers of the day did not have any intention to retrieve article 44 which has been in the state of abeyance since 1949.

In *Lily Thomas v. Union of India*, (Lily Thomas v. Union of India, 2000) the Apex Court held that there is no doubt that uniform civil code is required but it can be possible only when the leaders instead of working for personal gains work towards awakening the masses to accept the change.

The debate on uniform civil code was once again ignited when the triple talaq issue in *Shayara Bano v. Union of India*, (Shayara Bano v. Union of India, 2017) was brought before the Supreme Court.

## RESPONSE OF LAW COMMISSION OF INDIA ON UNIFORM CIVIL CODE

The 21<sup>st</sup> Law Commission of India had examined the issue regarding uniform civil code and had solicited the views of all the stakeholders through its appeal along with a questionnaire dated

07.10.2016. Thereafter, the Commission had issued the consultation paper on “Reforms of Family Law” on 31.08.2018. The 21<sup>st</sup> Law Commission in its consultation paper had stated that it is neither necessary nor desirable to have one set of laws applicable to all the citizens of the country. Instead, the Commission had recommended religion wise amendments in the personal laws and to make the civil laws gender neutral. In the event that a consensus on uniform civil code cannot be reached, the Commission had stated to safeguard the diversity of personal laws. The Commission however, had noted that personal laws should not infringe the fundamental rights and had suggested for codification of personal laws in family matters. In case if there are any inequalities in the codified laws then it has to be rectified by way of amendments.

### **IMPLEMENTATION OF UNIFORM CIVIL CODE: WHETHER FEASIBLE?**

First and foremost, there has been much controversy about the real meaning, message and the scope of article 44. There has been problem as to how to determine the meaning and scope of expression ‘civil code’ as used in the said article. It may be pointed that the term ‘uniform’ is not equal or similar to the term ‘common’. Therefore, the question as to what constitutes ‘uniform’ in terms of a civil code and whether the constitution talks about rigid uniformity of family laws needs to be addressed. Another important question that needs to be addressed is how to implement article 44 without affecting the fundamental rights of the citizen. This question is important as implementation of a uniform civil code is viewed as a panacea to remove all the inequalities and discrimination and in maintaining a rule of law. Thus, we cannot read the provision of article 44 in isolation with other provisions of the Constitution which guarantees equality before law and equal protection of law.

Another concern is that it is unclear whether the scope of a uniform civil code would be limited to matters involving inheritance, marriage, and divorce or would also cover other aspects as well. Further, the legal diversities existing in the country are so immense that any attempt to impose a uniform civil code will cause widespread hostility and conflict. Also, the personal laws of certain communities particularly those of the tribal peoples of North-East India, enjoy constitutional safeguard, thus, all these issues need to be addressed (Ahmad, 1995).

The adoption of a uniform civil code is viewed as a magic wand for achieving gender equality. A uniform civil code is seen as a panacea to end the discriminatory practices as it is known fact that every religion in India follow practices that are discriminatory towards women (Agnes, 1999).

However, this proposed solution appears to have a flaw. As since many decades, there has been discussion and debate on the implementation of a uniform civil code. However, till date there has been no draft on uniform civil code nor there has been any blueprint prepared or any roadmap as to how it is going to look like.

Amid the discussion on uniform civil code the whole discourse has failed to take into account the voices of women. In the entire discussion of the uniformity of civil laws, the issues affecting women have never been brought up (Shambhavi, 2017). The only topic of discussion throughout has been the implementation of a uniform civil code to end disparities, but how this can be achieved and the way forward have not been addressed. Another issue with uniform civil code is whether it will be optional and not compulsory. Any arrangement that grants the people with the choice is not going to be beneficial. If the purpose of a uniform civil code is to provide protection to the vulnerable sections of the society, then the optional arrangement will not be able to achieve the desired goal of achieving a just society.

Thus, the only solution to the issues mentioned above is first and foremost to prepare a draft by addressing all the concerns and then to have a deliberations and discussion on the said draft by inviting suggestions from the stakeholders and civil society members. Then only the question on whether it is feasible to implement uniform civil code in India can be answered.

## CONCLUSION

Uniform civil code is considered as a panacea to achieve a just society. However, till date there has been no proper roadmap as to how uniform civil code can be implemented. The debate on uniform civil code starting from Constituent Assembly till date has not focused much on the rights of the women. Uniformity in civil laws is considered important for any social reforms and to secure women's rights. Thus, discussion and discourse cannot be done without considering the voices of women. The need of the hour is to prepare a draft on uniform civil code and have discussion on the said draft by inviting suggestions and welcoming ideas from the stakeholders and civil society members. Then only article 44 of the Constitution will be able to see the light of the day as envisioned by the constitutional makers.

## References

- Agnes Flavia, (2011). Family Laws and Constitutional Claims, Oxford University.
- Ahmad Imtiaz, (1995). Personal Laws: Promoting Reform from Within, *EPW* Vol. 30, No. 452851-2852.
- Bharatiya Janata Party, (2019). Sankalp Patra Lok Sabha 2019 [Manifesto of the Bharatiya Janata Party], 37.
- Deshta Kiran, (2002). Uniform Civil Code in Retrospect and Prospect, Deep & Deep Publications.
- Dinanath Raina, (1996). Uniform Civil Code and Gender Justice, Reliance Publishing House, New Delhi.
- Diwan Paras, (1991). Muslim Law in India, Allahabad Law Agency.
- Humtsoe, P.C. (2022). India: Uniform Civil Code (UCC) in Relation to Personal Law, Uniform Civil Code (UCC) In Relation to Personal Law - Divorce - India (mondaq.com).
- John, E. Mary, (1998). “Feminism in India and the West: Recasting a Relationship” 10 *Cultural Dynamics* 197, 201.
- Noorani, A.G, (1972). Reform of Muslim Personal Law, Indian Express, May 21.
- Qamar Neema, (2015). Need of Uniform Civil Code- A Critical Study 3Laxmi Book Publication.
- Shambhavi, (2017). Uniform Civil Code: The Necessity and the Absurdity 21 Vol. I, *Journal of Indian Law Institute*.
- Sharma, B.R. (1985). “A Uniform Civil Code for India” 21 *CMLJ* 21.
- Singh M.P. (Ed.) (1994). V.N.Shukla, Constitution of India, 298, Eastern Book Company.
- Supreme Court of India (1985). “Mohd. Ahmed Khan v. Shah Bano Begum & Ors, AIR 1985 SC 945”, [Mohd. Ahmed Khan vs Shah Bano Begum and Ors on 23 April, 1985 (indiankanoon.org)].
- Supreme Court of India (1985). “Jordan Diengdeh v. S.S. Chopra, 1985 AIR 935; 1985 SCR Supl. (1) 704” [ Ms. Jordan Diengdeh vs S.S. Chopra on 10 May, 1985 (indiankanoon.org)].
- Supreme Court of India, (1995). “Sarla Mudgal v. Union of India, (1995) 3SCC 635: JT 1995 (4) SC 331”, [Smt. Sarla Mudgal, vs Union of India & Ors on 10 May, 1995 (indiankanoon.org)].
- Supreme Court of India, (2000). “Lily Thomas v. Union of India, AIR 2000 SC 1650” [Lily Thomas, Etc. vs Union of India & Ors. on 5 April, 2000 (indiankanoon.org)]

Supreme Court of India, (2017). “Shayara Bano v. Union of India, (2017) 9 SCC 1” [Shayara Bano vs Union of India and Ors. Ministry Of ... on 22 August, 2017 (indiankanoon.org)].

<http://www.lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf> Law Commission of India Consultation Paper on Reform of Family Law.