



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Uniform Civil Code: Fate of Indian Democracy?

Would you be content if you were required to abandon your personal convictions and religious beliefs in order to comply with a set of laws that apply equally to all residents of a nation? The answer would certainly differ with some people highlighting how it would violate **Article 29** of the Indian constitution which deals with **protecting culture of religious minorities** while some underscoring the need of **bringing unity** among all Indians irrespective of the religion or personal beliefs. Well, the truth is both the opinions draw our attention towards the **diverse nature of Indian society** in terms of languages, customs, religions, ethnicities and social structures. So, the question arises whether India as a country should accept Uniform Civil Code (*hereinafter referred to as UCC*) as its fate or there is still a long way to go. Before we try to answer this question, it is important for us to understand its history and dig a little more into what exactly is **Article 44** and how it has the potential to shape the future of the country only for the better, if not worst.

Tracing the roots of Personal Laws in India

Drafting Committee, under the chairmanship of **Dr. B R Ambedkar** was assigned the task of drafting the Indian constitution post-independence. In the draft presented to Constituent Assembly, UCC was referred under **Article 35**. Members spoke in favour of and against the UCC and suggested amendments. It was argued that a UCC would lead communities out of their isolationism and help produce national unity. In an advancing society, it was said, “*we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation*”. While **Mohamad Ismail Sahib** believed that a separate proviso must be added wherein UCC must not be enacted without the support of all communities. Secondly, the subject of family Law was extremely religious and that the state must not interfere in such matters. The debate on whether UCC should be included as a fundamental right or a directive Principle finally settled on a majority of **5:4**; wherein the **sub-committee on Fundamental Rights** headed by **Sardar Vallabhbhai Patel** decided that securing a UCC was not within the scope of fundamental rights and that it must go under Directive Principles of State Policy (DPSP) for time being. Hence, this came to be regarded as a **dead letter** which would come to life only when India was ready to accept it.

Examining Disparities within Personal Law Systems

Religious personal laws, with their varied regulations, have notably impacted aspects like marriage, family structure, and inheritance, shaping how people live. To illustrate this point, let's consider some examples of religious personal laws. By dissecting issues like grounds for divorce, property rights, and maintenance claims, we can effectively showcase the varied approaches of different religious personal laws. Daughters and married women have the right to claim their share in their father's property as per the **Hindu Succession (Amendment) Act, 2005** following the **174th Law Commission** recommendations. As per the **Muslim Personal Law (Shariat) Application Act, 1937**, the amount of the property share of a female heir is entitled to half of that of the male heirs because as per Muslim law, upon marriage a female receives mehr and maintenance from her husband whereas males only have the ancestral property. Secondly, in Muslim culture, the factor of inheritance emerges only after the death of a person which means that the property that belongs to any living person cannot be inherited as well as it does not acknowledge the 'right to property by birth' that exists in Hindu law. This means that any child born in a Muslim family does not have a right to property at the time of his birth. With regards to the Maintenance, under Islamic law similar to the Christian law, the wife is entitled to maintenance from the husband. But under the Hindu and Parsi law either spouse are entitled to maintenance.

UCC Implementation by a single actor

In a move to eliminate variations in personal laws across religions, Uttarakhand has become the first state in independent India to enact a Uniform Civil Code. However, it's important to note that Goa, upon liberation in 1961 with a much smaller population, continued to use the Portuguese Civil Code, effectively creating a uniform system for all its citizens. The Bill passed in Uttarakhand proposes a uniform law on marriage, divorce, inheritance of property, and cohabitation for all citizens, regardless of their religious affiliation, while excluding the tribal community from its scope. It aims to regulate live-in relationships by imposing an obligation to register them. In case, couples in a live-in relationship do not submit their statement, they will be served a notice following which criminal prosecution can be initiated against them. **Section 4** says that "neither party has a spouse living at the time of the marriage", thus prohibiting bigamy or polygamy. Men and women have been accorded similar rights with respect to divorce. Existing Muslim personal law practices governing marriage and divorce such as Nikah Halal and tripal talaq have been criminalized under the Bill without explicitly naming them. The Bill extends **equal property rights for sons and daughters** across all classes. With this move, the state has ushered in an era of equal legal treatment for all citizens, regardless of religion.

The path ahead

A thorough comparison of India's diverse personal laws is necessary to identify both shared principles and points of friction. On the basis of critical analysis, we can enact a common law incorporating shared principles which align closely with different personal laws. A just code is far more important than a uniform code keeping in mind its effective and long-term implementation. Thus, **Pilot projects** can be initiated in select regions or communities which would demonstrate the viability, acceptance and practicality of a UCC.

