

REVIVING ARTICLE 44 OF THE CONSTITUTION OF INDIA: THE URGENT NEED FOR A UNIFORM CIVIL CODE IN INDIA

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Introduction

During the Muslim rule in India, justice was administered by the Qazis who applied the Muslim Scriptural law to Muslims. However, there was no such assurance for litigations concerning Hindus. This system continued during the time of the East India Company until Warren Hastings made Regulations in 1772 for the administration of civil justice for the native population without discrimination between Hindus and Muslims. The Regulations of 1781 prescribed that either community was to be governed by its "personal" law in matters relating to inheritance, marriage, religious usage, and institutions. Criminal justice was governed by the English common law, which superseded the Muslim law in 1832.

The Indian Penal Code was enacted in 1860, and this policy continued throughout the British regime until independence. The British Rulers partitioned the territory of India into two states on the basis of religion, but the Indian leaders did not believe in the two-nation or three-nation theory. In the Indian Republic, there was to be only one nation—the Indian nation—and no community could claim to remain a separate entity on the basis of religion. The respective personal laws were permitted by the British to govern matters relating to inheritance, marriages, etc. only under the Regulations of 1781 framed by Warren Hastings. The authority under which personal law was permitted to operate was legislation, not religion. Therefore, a uniform civil code can be introduced to supersede or supplement the personal laws. No community can oppose the introduction of a uniform civil code for all citizens in the territory of India.

Article 44 of the Constitution of India

Article 44 of the Constitution of India mandates the State to strive towards establishing a uniform civil code throughout the country, which would introduce a uniform personal law and promote national consolidation. Despite this, the ruling governments have failed to take any significant steps towards achieving this goal, with the Hindu law being the only one codified so far. While Pandit Jawahar Lal Nehru had defended the introduction of the Hindu Code Bill instead of a uniform civil code in 1954, it is now time to retrieve Article 44 from the cold storage and introduce a unified personal law for all Indians. With over 80% of citizens already under the codified personal law, there is no justification for further delay.

Significant Supreme Court judgments regarding the UCC

*Mohd. Ahmed Khan v. Shah Bano Begum*²: Dr. Tahir Mahmood, in his book 'Muslim Personal Law' (1977 Edition, pages 200-202), advocates for the implementation of a uniform Civil Code for all citizens of India in the pursuit of secularism. He emphasizes that the State should refrain from administering religion-based personal laws. Although he hopes that the majority community will take the lead, he believes that the State must take action regardless.

Dr. Mahmood urges the Muslim community to redirect their efforts from seeking immunity for their traditional personal law to exploring and demonstrating how true Islamic laws, free from outdated interpretations, can enhance the common civil code of India. The Court ruled that a Muslim woman is entitled to maintenance from her husband after divorce, even if he has remarried. Additionally, the Court emphasized that the Parliament should consider enacting a UCC to ensure gender equality in all aspects related to marriage, divorce, and maintenance.

*Sarla Mudgal v. Union of India*³ : The Court declared that the Hindu Marriage Act, 1955, which permits the restitution of conjugal rights, violates Article 21 of the Constitution, guaranteeing the right to life and personal liberty. The Court also highlighted the need for the Parliament to contemplate enacting a UCC to establish uniformity.

In the case of Ms. Jordan Diengdeh vs. S.S. Chopra⁴, O. Chinnappa Reddy, J. speaking on behalf of the Court, made reference to the remarks of Chandrachud, CJ in the Shah Bano Begum's case. The Court highlighted the pressing need to breathe life into Article 44 of the Constitution, which mandates the State to strive for a uniform civil code across India. This case further underscores the immediate and compelling necessity for a uniform civil code, as the inadequate state of affairs resulting from its absence is exposed by the facts at hand. Prior to delving into the specifics of the case, it is pertinent to mention the observations made by Chandrachud, CJ in the recent Constitution Bench decision of Mohd. Ahmed Khan vs. Shah Bano Begum.

Attempts by Successive Governments

The successive governments have failed in their duty to implement the constitutional mandate stated in Article 44 of the Constitution of India. Therefore, we urge the Government of India, specifically the Prime Minister, to reconsider Article 44 and strive to establish a uniform civil code throughout the country. Additionally, we direct the Government of India, through the Secretary of the Ministry of Law and Justice, to submit an affidavit from a responsible officer to this Court in August 1996, detailing the steps and efforts taken towards achieving a uniform civil code for the citizens of

² AIR 1985 SC945

³ AIR 1995 SC1531

⁴ AIR 1985 SC935

India. Justice Sahai, in his concise and supportive opinion, has proposed certain measures that the government can undertake in this regard. In response to the questions raised at the beginning of this judgment, we declare that the second marriage of a Hindu husband after converting to Islam, without dissolving his first marriage under the law, would be considered invalid. Such a second marriage would be void according to the provisions of Section 494 IPC, and the husband who has a posttized would be guilty of an offense under Section 494 IPC. Having answered the legal question, we conclude the writ petitions. The petitioners may seek any relief available to them as a result of this judgment or through other means. No costs will be imposed. Smt. Sarla Mudgal, President Kalyani&Ors. etc. etc. Vs. Union of India &Ors. Given the sensitivity and magnitude of the issue, both in terms of the desirability and feasibility of a uniform or common civil code, it is necessary to add a few remarks to the social necessity mentioned in the proposed order by esteemed Justice Kuldeep Singh. These remarks aim to highlight the urgency of enacting such legislation and to express my complete agreement with the thought-provoking reasons presented by Justice Singh in his order, which are clear and articulate.

Issue and Debate

The debate pattern, even in present times, remains consistent with the strong voices of the minority community in the Constituent Assembly. If the failure to implement the provisions stated in Article 44 is seen as a significant setback to Indian democracy, the opposing side argues that the logical probability suggests that the code would lead to dissatisfaction and disintegration rather than serving as a unifying force to promote homogeneity and national solidarity. During the framing of the Constitution, the ideal and goal of secularism found its expression in Article 44, reflecting the consensus and conviction to be socially united. However, the foundation of secularism, which is religious freedom, was guaranteed by Articles 25 to 28 of the Constitution⁵. Article 25, with its broad wording, ensures not only freedom of conscience but also the right to profess, practice, and propagate religion for all individuals. Religion encompasses any faith or belief, and the Court has expanded religious liberty, as guaranteed by the Constitution, to include practices and external overt acts of individuals. Religion goes beyond mere matters of faith, as the Constitution safeguards the inner aspects of religious belief through the guarantee of freedom of conscience, while also protecting the external expression of religion by ensuring the right to freely practice and propagate it. Activities such as reading and reciting holy scriptures, offering food to deities, bathing idols, dressing them, and visiting places of worship like temples, mosques, churches, or gurudwaras are all integral parts of religion. Furthermore, matters such as marriage, inheritance, divorce, and conversion hold religious significance and are as important as any other belief or faith. Rituals like circling the fire seven times during a

⁵The Preamble of the Indian Constitution has the word "secular", and articles 25 to 28 implying that the State will not discriminate, patronise or meddle in the profession of any religion. However, it shields individual religions or groups by adding religious rights as fundamental rights. Hindu wedding

or giving consent before a Qaziin Islamic marriages are matters of faith and conscience, just like the act of worship itself. When a Hindu converts by reciting the Kalma or a Muslim becomes Hindu by reciting certain Mantras, it is a matter of belief and conviction.

The issue at hand in these appeals pertains to the fact that many Hindus have converted to Islam solely to evade the consequences of bigamy. For example, Jitendra Mathur was married to Meena Mathur, but he and another Hindu woman converted to Islam, likely due to the allowance of multiple wives under Muslim Law. However, no religion condones intentional distortions. There is a great deal of misunderstanding surrounding bigamy in Islam, and many Islamic countries have taken steps to prevent its misuse by codifying personal law and either prohibiting or severely restricting polygamy. While India is a secular democratic republic that values religious freedom, any deviation from established norms can have a negative impact on social cohesion. Religious practices that violate human rights and dignity are not a form of autonomy, but rather oppression. Therefore, a unified code is necessary to protect the oppressed and promote national unity and solidarity. The first step should be to rationalize the personal law of minorities to foster religious and cultural harmony. The Law Commission, in consultation with the Minorities Commission, should be entrusted with the responsibility of examining the matter and drafting comprehensive legislation that aligns with modern concepts of women's rights.

Conclusion

Here is a comprehensive analysis of the advantages and disadvantages of implementing a UCC:

Advantages:

- National unity: A UCC has the potential to foster national unity by establishing a uniform set of personal laws for all Indians, irrespective of their religion or community. This could help to mitigate communal tensions and promote a more cohesive society.
- Gender equality: The UCC could serve as a catalyst for gender equality by eliminating discriminatory practices that are entrenched in many personal laws. For instance, it could introduce a common minimum age of marriage for both boys and girls, and make it easier for women to obtain a divorce.
- Social justice: The UCC could promote social justice by ensuring that all Indians have equal access to justice in matters of personal law. This is crucial because many personal laws are biased against certain groups, such as women and religious minorities.
- Efficiency and effectiveness: A UCC could be more efficient and effective to administer than the current system of multiple personal laws.

This is because a UCC would establish a single set of rules that would apply to everyone, regardless of their religion or community.

Disadvantages:

- Religious and cultural rights: Opponents of a UCC contend that it would impinge on the religious and cultural rights of minority communities. This is because many personal laws are rooted in religious scriptures and traditions.
- Implementation challenges: Implementing a UCC in India could be arduous due to the country's diversity. There is no consensus on what a UCC should entail, and it is likely that any attempt to implement it would face resistance from certain groups.

Overall, the acceptance of a Uniform Civil Code (UCC) in India is a subjective matter. There are compelling arguments on both sides of the debate. The Indian government must thoroughly evaluate the advantages and disadvantages before reaching a decision on whether to implement a UCC. The Supreme Court of India has consistently stressed the necessity of a UCC in the country. Through various judgments, the Court has asserted that a UCC is crucial for achieving gender equality and national integration. However, the Court has also recognized that the enactment of a UCC is a policy matter that falls under the exclusive jurisdiction of the Parliament. In a 2019 judgment, the Court acknowledged that "the Parliament is the most appropriate platform to address the intricate issues involved in the implementation of a Uniform Civil Code." Despite the Court's stance, the Parliament has yet to pass a UCC. This issue is highly contentious, with proponents arguing that it is essential for establishing a fair and just society, while opponents claim that it infringes upon religious freedom. In recent years, there has been a renewed push for the implementation of a UCC.

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