

## ***Uniform Civil Code: A Mean to Integrate India***

***Dimple Bhatti***  
***LL.B., LL.M., NET***

### ***Introduction:***

The Uniform civil code ,originates from Article 44 of the Directive Principle of State Policy (DPSP) in the constitution of India .The Prime Minister Jawaharlal Nehru ensured it included in the DPSP as the proposal of UCC was brought out at first by him .After independence ,UCC slammed the doors of our country and as on date has become the most debated topic everywhere .The Supreme Court, has refused to interfere in this issue<sup>1</sup> when a three-judge bench led by the chief justice T.S. Thakur said that the apex court’s observations for enacting a common law can only be in the “realm of hope and expectation” but a mandamus cannot be issued to the government .

India is said to be a multi-religious, multi-lingual,multi-racial,multi-cultural society and many religions have been evolved and co-existed together for many centuries.The vast population in India is made up of various religions like Hinduism, Jainism, Sikhism, Buddhism, Islam etc.Indian constitution has given freedom to profess any religion<sup>2</sup>and India is known to be a Secular Country<sup>3</sup>.Concept of Secularism means the belief in the religion is not the part of the affairs neither of the state nor of the public education.Hence, in India Secularism is of much significance and is considered as basic feature of IndianConstitution<sup>4</sup>.

### **Object of Uniform Civil Code:**

The object that underlines a uniform civil code is to basically enhanced national integration by eliminating the contradiction based on religious ideologies. India has many personal family laws for each religion and there is no homogeneity of law in respect of marriage,adoption, divorce, succession etc. The secular republic, in order to achieve true secularism, needs Uniform Civil Code which governs various sects of Community.

### **Need for Uniform Civil Code:**

The concept of UCC is unifying all the personal laws to have a secular set of laws, it is a proposal to replace personal laws.Currently, Hindus have their own set of codified law,Muslims have their own traditional laws, Christian have their own laws, Parsis and Jains have their own set of laws in the area like marriage, divorce, maintenance, inheritance, adoption etc.,governing

them. UCC will be applicable to all the citizens irrespective of their religion .It is based on the premise that there is necessarily no connection between religion and laws in a civilized society.

Implementing the code will bring forth the true meaning of ‘secular’, it will give more right to women,against exploitation, so as to achieve gender justice. The rights of women are usually limited under religious law, be it Hindu or Muslim, Jain, Sikh, or Parsi. There are few classic example in personal laws likes laws based on religious scriptures and customs are discriminating women on various ground, likes polygamy and triple talaq are allowed under Muslim personal laws. Muslim are exempt from paying stamp duty on gift deeds. Hindu Undivided Families, are allowed getting tax exemptions.

### **UCC and Constitution of India:**

During British Rule, uniform laws were framed related to crimes, evidences and contract, but they intentionally left the personal laws of Hindus and Muslims to allow them to continue to practice their religious scriptures and custom. However, British government was never interested to fram laws against personal laws mainly due to the fear from orthodox community leaders. <sup>5</sup>After Independence, the Constitution Assembly was set up to frame our constitution. The divided the Constituent Assembly as well. The Constituent Assembly saw a division along communal lines among members. The result was that Constitution did not get anything beyond one line as Article 44 in Part IV of the Constitution, which says that “The State shall endeavour to secure for the citizen a uniform civil code throughtout the territory of India”<sup>6</sup>This was merely a symbolism. As one of the Directive Principles of State Policy, neither enforceable in court nor has any political dispensation been able to go beyond rhetoric in this direction.

In **Sarla Mudugal v. Union of India**<sup>7</sup>, judgement given by Justic R.M. Sahai said:

“Ours is a secular democratic rebublic. Freedom of religion is the core of our culture .Even the slightest of deviation shakes the social fibre. But religious practices, violative of human right and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity.”

### **Judicial approach to UCC :**

The judiciary has always been keen for the implementation of a uniform civil code India In 1985, in the land mark judgment delivered i.e. Mhd. Ahmed khan v. Shah Bano Begum<sup>8</sup> popularly known as Shah Bano case, the Supreme Court suggested to the parliament that it is extremely essential to frame a uniform civil code. In this case, Shah Bano, the Muslim woman claimed maintenance from her husband under Section 125 of the Criminal Procedure Code, 1973 after she was given a triple talaq by him .The Supreme Court observed that she had a right and even the



Holy Koran speaks that it is obligatory on the part of a Muslim husband to make a provision for his divorce wife, then the chief justice of India, Justice Chandrachud, observed as under:

“A common civil code will help the cause of nation integration by removing disparate loyalties to law which have conflicting ideologies.”

After this decision, national wide discussions, meetings and agitations were held. Then the Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of Muslim women for maintenance under Section 125 of the Code of Criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the UCC, not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

In the case of *Sarla Mudgal v. Union of India*,<sup>9</sup> the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage. The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and marrying again would not by itself, dissolve the Hindu marriage under the Act and, thus second marriage solemnized after converting to Islam would be an offence under Section 495(5) of Indian Penal Code. In *Pragat Varghese v. Cyril George Varghese*<sup>10</sup>, the Bombay High Court has struck down section 10 of Indian Divorce Act, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on ground that it violates Article 21 right to live with human dignity<sup>11</sup>. These are the implications of different personal laws for various communities.

Justice Kuldeep Singh also opined that Article 44 has to be retrieved from the cold storage where it is lying since 1949 and referred to the codification of the Hindu personal law and held, “where more than 80 per cent 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 the ‘uniform civil code’ for all the citizens in the territory of India”.

Further, in 2003 the Supreme Court reminded about the enactment of UCC when a Christian priest knocked the doors of the court challenging the Constitutional validity of Section 118(7) of the Indian Succession Act. The priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restriction on their donation of property for religious or charitable purpose by will. The bench comprising of the Chief Justice of India V.N Khare, Justice S.B. Sinha and Justice A.R. Lakshmanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated:

“We would like to state that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India .It is a matter of great regrets that Article 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”<sup>12</sup>

Thus, as seen above, the apex court has on several instances directed the government to realize the directive principle enshrined in our Constitution and the urgency to do so can be inferred from current issued in the recent times.

Thus the responsibility lies on the State to interfere in the matter of religion so as to remove the impediments in the governance of the State.The government should generate the consensus in various communities in the country for enactment of uniform civil code .However while framing the uniform civil code,the government has to be extra careful not to trample upon the constitutional rights of minorities.Passage of a common civil code will also help in strengthening the cause of national integration by removing conflicting interests.

The biggest obstacle in implementing the UCC, apart from obtaining a consensus,is the drafting.The possibility of UCC in the way our former Prime Minister Atal Bihari Vajpayee who said that there will be a new code based on gender equality and comprising the best elements in all the personal laws<sup>13</sup>

## **Conclusion:**

Over the last few months, there have been two big religious debates e.g. Shariat Laws,particularly those to do with the triple talaq and polygamy, ought to be allowed to overpower the legal right of a citizen of India ;the Jain practice of santhara ought to be considered suicide-Rajasthan High Court has held that santhara-or the Jain practice of starvation in to death –was not an “essential religious practice “of Jainism, and that it ought to be punishable as suicide and abetment to suicide under the Indian Penal Code ,this sparked protests by Jains .In a country which claims itself secular,’secular’ tag must not imply that each religion is free to make its own laws,’secular’ must imply all citizens of the country will have equal rights,irrespective of the religion to which they belong.

Hence the code will integrate India,by truly uniting the nation .We will feel united as one regardless of caste, religion and other social evils that seems to differentiate one person from another. The Code can change the whole social and political structure bringing some good changes to our nation.Almost, all the developed nations have a uniform civil code and it is high time that our nation,too,implements it for better secularism. It is disconcerting to see that, in recent times,serious question are being raised about India’s secularism. Therefore success of Secularism should not be on the sheets, it must be on the streets.



## End Notes:

1. [//indianexpress.com/article/india/india-news-india/uniform-civil-code-sc-refuse-to-interfere-wont-issue-directive-to-center/](http://indianexpress.com/article/india/india-news-india/uniform-civil-code-sc-refuse-to-interfere-wont-issue-directive-to-center/)
2. Art25 of Indian Constitution.
3. By way of 42<sup>nd</sup> Constitutional Amendment, 1976.
4. S.R.Bomma v. Union of India, AIR 1996 SC 309.
5. [http://www.gktoday.in/iaspoint/current/uniform-civil-code-in-india/visited on 2-2-2017 at 10.30 am.](http://www.gktoday.in/iaspoint/current/uniform-civil-code-in-india/visited%20on%202-2-2017%20at%2010.30%20am)
6. M.P.Jain, "Indian Constitutional Law," 6<sup>th</sup>edn., (Nagpur; Lexis nexis Butterworths, 2010 )p.1510.
7. AIR 1995 SC 1531.
8. Ms.Jorden Diengden v.S.S.Chopra, AIR 1985 SC 934; Madhu Kishwar v.state of Bihar, AIR 1996 SC 1870; Danial Latife v.Union of India, AIR 2001 SC 3958; Lily Thomas v. Union of India, AIR 2000 SC 1650.
9. AIR 1985 S 945.
10. Supra n.5.
11. AIR 1997 Bom 349.
12. John Vallamattom v. Union of India, AIR 2003 SC 2902.
13. Dr.J.N.Pandey, The Constitution of India' 47<sup>th</sup>edn., (Allhabad; Central Law Agency, 2010)p.413.