

BJYM MAGAZINE

MAY 2022

Uniform Civil Code





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A portrait of Shri Tejasvi Surya, the BJIYM President. He is a young man with dark hair, wearing glasses, a white shirt, and a dark blue vest. He has his hands clasped in front of him and is smiling slightly. The background is a blurred outdoor setting with green foliage and a red building.

Message from the BJIYM President Shri Tejasvi Surya

Namaskar!

I hope the May edition of the BJYM Magazine finds you in good health and that you are striving toward building New India for the 21st Century under the leadership of Prime Minister Modi. BJYM is committed to the rejuvenation and renaissance of Indian civilisation, and all our activities are directed towards empowering youth to become the architects of New India. BJP is the only party that has remained true to its ideological roots and political agenda. We promised to abrogate Art 370, rebuild Ram Mandir, and implement the CAA and Uniform Civil Code even when we didn't have seats in the local bodies. Seventy years is a long journey in the life of a political party. Still, we have remained committed to our core agenda and delivered three of the above four ideological and civilisational promises. As the debate around the proposed Uniform Civil Code gains momentum, BJYM dedicates its May edition of the BJYM magazine to contribute to the debate and discussion.

BJYM Magazine is a platform to engage with college students, professionals, and young writers on contemporary issues. It aims to nurture a pool of young writers to lead public discussions on contemporary issues. It will promote the culture of reading and writing apart from bridging the gap between the party and the youth on ideological & policy issues. BJYM Magazine was launched by BJP National President Shri J.P. Nadda Ji in October, and since then, seven monthly editions have been published with around 100 authors contributing 105 articles.

In April, BJYM also launched the unique initiative of BJYM Sushasan Yatra. Sushasan Yatra is an experiential learning training module for the BJYM cadre. Under it, BJYM delegations will travel to different parts of the country to observe and learn from the transformation and development underway since 2014. It will familiarise them with the implementation of policies at the ground level. They will also visit industries, infrastructural projects, and cultural sites. 50% of the delegation shall consist of District and Mandal level Karyakartas. It will help them expand their vision and horizon of thinking and become more aware leaders in their area. Sushasan Yatra will also help forge dialogue and friendships among the BJYM cadre across India and help them evolve a pan-India vision.

Friends, on the one hand, our democracy is witnessing the consolidation of nationalist and development-oriented politics represented by the BJP. On the other hand, forces of anarchy and political feudalism are regrouping to reverse the democratic gains and good governance since 2014. But BJYM stands as a wall against these forces of anarchy, communalism and exploitation. The resolve of BJYM Karyakartas was demonstrated when we challenged the inaction of the Rajasthan government during the Karauli riots or when we forced the fascist Kejriwal and his lackeys on the backfoot when they mocked the ethnic cleansing of Hindus in Kashmir. Due to sustained protests by BJYM in Bengal, the TMC government has issued notification of recruitment of teachers for the first time after 2016. Our brave BJYM Bengal Karyakartas shall ensure that recruitments are held fairly and transparently. We are determined to uproot the corrupt and tyrannical Mamta government, which is pushing Bengal towards social and economic disaster.

The Next edition of the BJYM magazine will be on the so-called 'Delhi model' of AAP. The AAP represents a growing threat to Indian democracy, national integration and economic growth due to its fascist tendencies, corruption, economic mismanagement and value-less politics backed by Goebbels style propaganda and disinformation campaign. It is important to expose the web of lies propagated by AAP and defeat it.

I urge you all to join the journey of bringing development to the masses, strengthening democracy and building a strong and prosperous India by actively working with BJYM.

Vande Matram



Editorial

Directive principles contained in Article 44 stipulate that: "The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India". Although compulsions behind putting Uniform Civil Code (UCC) in cold storage were political, a web of complex and high-sounding arguments has been woven to justify the old political class's lack of will and vision. In this sophistry, they are joined by the liberal intelligentsia that cloaks the regressive agenda of scuttling UCC in the modern language of secularism, multiculturalism, and democracy.

The first defence which is advanced against UCC is that of multiculturalism. Multiculturalism has two meanings which are rarely acknowledged. One is simply the description of the reality, i.e. society has more than one cultural stream and refers to the beauty and vibrant confluence which comes from such diversity. Second is multiculturalism as a political ideology which seeks to preserve and promote cultural diversity. It is argued that each community is different and has the right to be different. It is wrong for the state to intrude into any community's cultural realms, especially the minority community. The communities have the right to govern their social-cultural aspects and evolve them without any outside intervention. Therefore, it is wrong to create a UCC as such an act will be against multiculturalism which is taken as the essence of India.

The argument is not only flawed but a dangerous one as well. First, it tends to privilege communal identity over individual identity, liberty, and choice. Most people belong to a culture because they are born into it. Being born into a cultural setup is not an act of cultural liberty (although the decision to stay in it after consideration of viable options is). When we compartmentalise people into various cultures in the name of multiculturalism, we are branding them and stereotyping them as belonging to a particular set of values, thinking, and behavioural patterns.

Culture cannot be defined solely based on religion, and individuals don't have just one identity. Therefore, religiously defined personal laws cannot be argued based on multiculturalism, and individuals cannot be forced into them in the name of their religious beliefs. Multiculturalism is also flawed when it favours diversity for diversity, which leads to moral confusion. And multiculturalism today has become camouflage for moral relativism, i.e., no one value system is better than the other. It is a negation of the objective reality that all cultures are not equally beneficial/suited for the progress of humanity. Culture with the right of women to vote, the right of women to equal wage, the right of women to an equal share of the property, right of women to abortions is not just different but better than the culture which doesn't have them. The argument of multiculturalism seeks to trap people in religiously defined cultural realms that are supposed to be in a time warp. The misplaced pleas to let each community have laws based on their cultural sensitivity neglects the transformative role of law as the catalysis of change.

The second defence in the service of the personal laws is that of secularism - "Secular India" must not interfere in the religious matters of various communities. However, a reverse point can be made, i.e., why should a secular



India give such sweeping exemptions based on religion? The principle of secularism means that the state will not discriminate against individuals based on their religious beliefs or lack of it. But by instituting religion-based personal laws state is precisely doing that! Secularism does not mean that the state will not intervene in the religious-social-economic matter of any community if it has a reason to do so. Article 25, while protecting religious freedom, also empowers the state to regulate or restrict any economic, political, financial, or other secular activity associated with religious practices. Rulings on prayer, fasting, and marriage rituals are uncontroversial and not the concern of the UCC. What UCC seeks is the secular reform of the power and property structures, especially regarding women's rights.

Secularism in no way leads to religion-based personal laws that use religion as a shield and are often immune from any rational enquiry. Even if secularism somehow does justify such personal laws, it is just one of the principles of the constitution, along with equality before the law, gender equality etc. There is no reason whatsoever for secularism to supersede these principles in case of a clash. Secularism means the separation of state and religion. It also means that secular state laws will take precedence over religious laws. It is perplexing that personal laws can be defended in the name of secularism. How can UCC be opposed in the name of secularism? How come in a secular state, relations between state and citizens be mediated through religiously defined cultural boxes?

The third misguided opposition to UCC comes in the name of democracy. It is argued that it is undemocratic to impose a uniform law on people from different religions and cultures. But those who derive their arguments from this must first answer how democratic is the system of divine/revealed laws? How much democracy do they see in the system where religious scholars have exclusive rights to interpret these divine laws and not the institutions of the democracy? Democracy is not simply "what people want"; that's mobocracy and anarchy. What distinguishes democracy is the rule of law, based on logic and rationality, law formulated after due process of discussions, debates and yes, vote and not based on unquestionable religious diktats.

Many intellectuals and opposition leaders' misplaced opposition to UCC is based on the untenable ground. It takes a lot of imagination and sophistry to press secularism and democracy into the service of the un-secular and un-democratic cause of religion-based personal laws. And multiculturalism today is just a byword of moral relativism, which argues that nothing is right or wrong and things are just different. It may or may not be true that nothing is right or wrong, but what is true is that it's the human ability to create standards and thus differentiate between right and wrong, which is at the root of the entire edifice of civilisation.



समान नागरिक संहिता - एक आवश्यकता



विधानसभा चुनावों से पहले जब मैंने प्रदेश में समान नागरिक संहिता लागू करने का वक्तव्य दिया तब प्रश्न किया गया कि क्या यह चुनाव जीतने के लिए दिया गया वक्तव्य है. चुनाव से ठीक पहले एक खास विचारधारा या कहें, एक खास समुदाय ने कर्नाटक से 'हिजाब' पहनने के मसले को तूल देना शुरू किया। आप बीते ऐसे ही कुछ मुद्दों को देखेंगे तो पाएंगे कि हमेशा से ऐसे विवादों के पीछे भाजपा तथा इस राष्ट्र का विरोध करने वाले संगठनों का हाथ रहता है और इन विवादों को हवा देकर कांग्रेस और उसी मानसिकता वाले कुछ अन्य दल तृष्ठीकरण की राजनीति शुरू कर देते हैं। इस बार जब ये विवाद उठा तो इसने मुझे बहुत पीड़ा दी और भीतर तक कचोट गया। मैंने अपनी पार्टी के वरिष्ठ नेताओं से बातचीत की और निर्णय लिया कि

इस देश में अब सभी नागरिकों के लिए एक कानून यानी समान नागरिक संहिता बिल की हम न केवल पुरजोर तरीके से पैरवी करेंगे बल्कि इसे लागू करने की दिशा में पूरी गंभीरता के साथ आगे बढ़ेंगे। हम इसके लिए पूर्णतः कटिबद्ध हैं. अपना भारत देश और यह उत्तराखंड प्रदेश शरिया से नहीं, संविधान से ही चलेंगे।

ये विचार मात्र भारतीय जनता पार्टी का ही विचार है ऐसा नहीं है. देश में सभी वर्गों के लिए एक समान नागरिक कानून होने चाहिए, इस बात को उच्चतम न्यायालय ने समय-समय पर सरकार को निर्देशित किया है। अहमद खान बनाम शाह बानो केस में सर्वोच्च न्यायालय ने कहा था कि समान नागरिक कानून बनने से देश को एकता सूत्र में पिरोने में मजबूती मिलेगी। इससे कोई भी

धर्म या समुदाय निजी तौर पर कोई कानून नहीं बना सकेगा। एक देश एक कानून को लेकर संविधान निर्माता डॉ अंबेडकर ने कहा था कि देश में मानवीय संबंधों के अनेक उदारहण हैं, जोकि समान नागरिकता संहिता को दर्शाते हैं। सारे देश में ये एक समान हैं, लेकिन विवाह, उत्तराधिकारी, तलाक जैसे मामले में समान नागरिक संहिता अभी नहीं है, जिसे देश में लागू किया जाना चाहिए।

उत्तराखंड के सन्दर्भ में तो समान नागरिक संहिता का विशेष महत्व है. उत्तराखंड हमारे भारत का एक ऐसा जीवंत राज्य है जिसकी संस्कृति और विरासत सदियों से भारतीय सभ्यता के मूल में समाहित रही है। भारतीय जनमानस के लिए उत्तराखंड एक देवभूमि है, जो कि हमारे वेदों-पुराणों, ऋषियों-मनीषियों के ज्ञान और आध्यात्म का केंद्र रही

है। भारत के कोने कोने से लोग बड़ी आस्था और भक्ति के साथ उत्तराखंड आते हैं। इसलिए उत्तराखंड की सांस्कृतिक-आध्यात्मिक विरासत की रक्षा अहम है। 130 करोड़ लोगों की आस्था का केंद्र माँ गंगा का उद्गम स्थल भी उत्तराखंड ही है। भारत का मुकुट हिमालय, और उसकी कोख में पनपती प्रकृति उत्तराखंड की धरोहर हैं। उत्तराखंड देश के लिए सामरिक दृष्टि से भी एक अत्यंत महत्वपूर्ण राज्य है। दो देशों की अंतर्राष्ट्रीय सीमाओं से जुड़ा होने के कारण भारत के लिए इस राज्य का भौगोलिक और रणनीतिक महत्व काफी बढ़ जाता है। इसलिए राष्ट्ररक्षा के लिए भी उत्तराखंड की भूमिका अहम है। उत्तराखंड के नागरिकों का भारतीय सेनाओं के साथ एक लंबा और गौरवशाली संबंध रहा है। यहाँ के लोगों ने पीढ़ी दर पीढ़ी अपने आपको देश की सुरक्षा के लिए समर्पित किया है। इस धरती के कितने ही वीर सपूतों ने देश के लिए अपने सर्वोच्च बलिदान दिये हैं। यहाँ लगभग हर परिवार से कोई पिता, कोई बेटा, कोई बेटी देश के किसी न किसी हिस्से में हमारी सेनाओं के माध्यम से मातृभूमि की सेवा में जुटा है।

उत्तराखंड की सांस्कृतिक आध्यात्मिक

विरासत की रक्षा, यहाँ के पर्यावरण की रक्षा और राष्ट्र रक्षा के लिये उत्तराखंड की सीमाओं की रक्षा ये तीनों ही आज उत्तराखंड ही नहीं बल्कि पूरे भारत के लिए अहम है। इस दृष्टि से नई सरकार ने अपने शपथ ग्रहण के तुरंत बाद पहली कैबिनेट बैठक में निर्णय लिया कि न्यायविदों, सेवानिवृत्त जजों, समाज के प्रबुद्ध जनो और अन्य स्टेकहोल्डर्स की एक कमेटी गठित करेगी जो कि उत्तराखंड राज्य के लिए 'यूनिफॉर्म सिविल कोड' का ड्राफ्ट तैयार करेगी। इस यूनिफॉर्म सिविल कोड का दायरा विवाह-तलाक, जमीन-जायदाद और उत्तराधिकार जैसे विषयों पर सभी नागरिकों के लिये समान कानून चाहे वे किसी भी पंथ में विश्वास रखते हों।

उपरोक्त पृष्ठभूमि में उद्देश्य को प्राप्त करने के लिए उत्तराखंड राज्य में रहने वाले सभी नागरिकों के व्यक्तिगत नागरिक मामलों को नियंत्रित करने वाले सभी प्रासंगिक कानूनों की जांच करने और मसौदा कानून या मौजूदा कानून में संशोधन के साथ उस पर रिपोर्ट करने के लिए विवाह, तलाक, सम्पत्ति के अधिकार, उत्तराधिकार से सम्बंधित लागू कानून और विरासत, गोद लेने और रख रखाव और संरक्षता इत्यादि के लिए एक विशेषज्ञों, वुद्धिजीवियों और हितधारकों की

एक समिति मा० उच्चतम न्यायालय / मा० उच्च न्यायालय के सेवानिवृत्त न्यायाधीश / मुख्य न्यायाधीश की अध्यक्षता में, गठित करने का प्रस्ताव है। हम तृष्णीकरण की राजनीति के लोभ में, एक वर्ग विशेष के वोट पाने मात्र के लिए देवभूमि की पहचान के साथ समझौता नहीं कर सकते। हम सत्ता में हैं तो यह हमारी जिम्मेदारी है कि हम समाज और विशेषकर एक वर्ग विशेष की कुरीतियों को दूर करें और उन्हें भी विकास की दौड़ में शामिल करें। भाजपा ने तीन तलाक पर कानून बनाकर लाखों मुस्लिम महिलाओं को संरक्षण दिया है, उनका सशक्तिकरण किया है। ये मुस्लिम महिलाएं इस कानून पर जब मोदी जी की, भाजपा की प्रशंसा करने लगी तो मुस्लिम उलेमाओं और नेताओं ने इन्हें हिजाब के मसले पर भड़काना शुरू कर दिया। लेकिन मुस्लिम महिलाएं और इस मजहब के समझदार लोग यह जान चुके हैं कि उनके पिछड़ेपन का कारण उनकी रूढ़िवादी मान्यताएं हैं और वे खुलकर अब इनका विरोध करने लगे हैं। इस देश का मुसलमान उनको वोट बैंक समझने वाले नेताओं को जवाब देने लगा है।

ये 'यूनिफॉर्म सिविल कोड' संविधान निर्माताओं के सपनों को पूरा करने की दिशा में एक अहम कदम होगा और संविधान की भावना को मूर्त रूप देगा। ये भारतीय संविधान के आर्टिकल 44 की दिशा में भी एक प्रभावी कदम होगा, जो देश के सभी नागरिकों के लिए समान नागरिक संहिता की संकल्पना प्रस्तुत करता है।

उत्तराखंड में जल्द से जल्द 'यूनिफॉर्म सिविल कोड' लागू करने से राज्य के सभी नागरिकों के लिए समान अधिकारों को बल मिलेगा। इससे राज्य में सामाजिक समरसता बढ़ेगी, जेंडर जस्टिस को बढ़ावा मिलेगा, महिला सशक्तिकरण को ताकत मिलेगी। उत्तराखंड का 'यूनिफॉर्म सिविल कोड' दूसरे राज्यों के लिए भी एक उदाहरण के रूप में सामने आएगा।

लेखक: पुष्कर सिंह धामी,
मुख्यमंत्री, उत्तराखंड



Interview with Vikramjit Banerjee, Additional Solicitor General of India



Let us begin with the Hindu Code Bill. It attempted to bring uniformity and reform into Hindu personal laws through their codification. Could you please provide insights into how the concerned Hindu communities were engaged during the drafting of the Bill to ensure their participation and representation?

Yes, so we know this is a redundant question. At that point in time, there was a consensus that there should be a

modernist interpretation of Hindu law, and therefore, in many ways, what was then considered to be traditionalist was not quite even given that much importance. Traditionalists may have had their points of view. As you know, historically, we had numerous interpretations of Hindu law. We had the Mitakshara, Dayabhaga, and Marumakkathayam systems. Within the Mitakshara system, the Banaras school, the Maratha school, and many more

schools. We had customary law for these different groups or "jatis", also part of Hindu law.

Before the effect of the sharia law, many of these customary practices that these communities followed were followed across the board, which means not only by Hindus but also people of other faith like Muslims. So all this was in some ways made uniform because the entire attempt was to have a UCC, but that did not work out, so it was brought in part

by part, piece by piece, and therefore the Hindu code was brought. It was one of the dreams of Babasaheb Ambedkar to have a UCC, but in the end, he ended up having just the Hindu code.

Did the Hindu code damage the plurality and vibrancy of the indigenous Hindu communities through a top-down imposition of uniform personal laws, or since it was a reformist code, it was able to bring the reform while preserving the vibrancy?

I look at it as a lawyer, someone inspired by Swami Vivekananda, and I say this seriously. Swami Vivekanand Ji said that Indians would have two forces to tackle in the future. On one side will be ancient customs, traditions, and spirituality, which is what it is, and on the other side would be a pool of modernity. He believed that you couldn't be completely westernized and modern; you have to retain the essence of yourself. And I think this piece of legislation and the debate in this area is exactly on this point. There were wonderful things in the customary law that we gave up while adopting the Hindu code bill. But to argue that everything in the custom was good is also not true. As Swami Vivekananda said, things in the custom had to be discarded if redundant, and so to that extent, the Hindu code addressed it. So I think there were good and bad things in it. For any change to come in the Hindu code in the future, it should come through a broader consultation with the community.

You can not unscramble it and break it. You have to take it forward, but it is extremely important that at least you consult those people who will be affected and not allow the bureaucrats to decide on behalf of people they have very little connection. I am not running down on the bureaucracy. Still, I think bureaucracy comes from a largely urban background, well-educated background, and belongs to a certain section, and our

country is immensely diverse. Its large section has possibly different ways. So we have to take these issues upfront. Otherwise, there would be more cleavages and more dissonance in society.

What lessons can the central government draw from the whole exercise of legislating the Hindu Code Bill in terms of what its approach should be towards various stakeholders? How can it ensure that the kaleidoscopic identity of the Hindus doesn't get further pushed to the margins and is instead kept intact with all its plurality?

The solution is to have a comprehensive consultation process. All stakeholders have to be accepted. You have to contextualize the time when the Hindu code bill came when modernism was taken to be the theory of the future. Anyone who went against it was discarded as old, but we know it did not work out the way we thought. So now here we are. We need to have a broader consultative process, that's one.

Now Broadly, to address the UCC, there are three ways to deal with this regarding the personal laws. I have three approaches.

The Supreme court can approach it through judicial interpretation and decree that every personal law will be subject to fundamental rights. So that there would be no discrimination in any form in any personal law because we cannot discriminate against the women in the process. When you formulate your personal laws, there is an attempt to say these are God-ordained discrimination. For better or for worse, we will live in a modern state. No matter how much we want to retain our identity, we will live in a modern state, and it must be understood that we will have to treat everyone equal. So, one way of doing this is through judicial intervention.

The second way is to come out with a

code. A code like the Portuguese code in Goa or the code Napoleon in Pondicherry. Whereby there is a code which everybody has to follow.

The third is to allow people to be governed by their personal laws but to make it subject to a charter of rights which says that everybody has to be treated equally. Women cannot be discriminated against in getting their rights over property and so on. These are issues that arise not only in male-dominated societies where men get better rights but also in matrilineal societies that exist in the northeast, so all these issues will have to be addressed. It could be done through a charter where men or women will not be discriminated against in any form.

The manifesto of the BJP for the 2019 general elections read as such: "BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonizing them with the modern times." How essential, in your view, is the UCC to the quest for gender justice, and how will its potential role play out? How can the task of harmonizing the traditions with modernity be best achieved during the codification process?

It goes to the root of codification and how legislation is made. The moment you go for the codification of any custom, the custom becomes redundant. If you know the history of the Hindu Marriage Act, you tried to keep a place for customs. Still, in the end, the code overpowered everything. Because the moment you codify it, the custom effectively becomes redundant, so that's a choice we have to make. In ancient India, every community used to have its custom. Still, those would be subject to the dharma that can be compared today to fundamental rights, anti-gender



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discrimination, etc. It is the Indian way of handling things that you allow everyone to have their laws but are subject to the present dharma and raj dharma.

We are a modern state, and you may have to create a degree of uniformity. We are a thousand-year-old and diverse civilization, and creating a modern society is a sensitive and tricky thing.

The Muslim Personal Law (Shariat) Application Act, 1937 was another colonial legislation pushed through by the Muslim League which imposed Sharia across all the Muslim communities in India, notwithstanding their religious differences and contrast in customary practices (including those which were a legacy of indigenous traditions). Please explain the politics behind its introduction.

We all know the strange politics behind the Shariat application act. Shariat application act was pushed through largely at the instance of the Muslim league. The object of the act mentions that it was done under the pressure of the Muslim league to override the local customs of various communities. The first step to creating an identity is to make laws, and the best way to make a watertight identity is to create laws that are unique to that society, and those are personal laws. Although the British also had their politics behind it, which was to divide and rule. It was cleverly done and has been repeated in several cases as well. The strangest of things is that there is one exception: in UP, one could still retain their customary law regarding the property. The strange thing is that they were the people who were pushing for it, and it was pushed up under the guise of modernization!

Sharia was a better deal for many and could be applied across the board. Customary law discriminated against women, and many Muslim women from the Muslim league pushed for reforms.

Very cleverly, some communities who were major backers of these new (personal) laws retained the rights in customary law because it suited them. So you know that I'm not saying good or bad. Those who studied 'adat law' in Indonesia will draw parallels. It comes from a similar situation where the Dutch adopted the exact opposite and supported the traditionalist against the modernist.

When the law came to be applied in Indonesia, it came to be Sharia as subject to customary law. And it's the customary law that overrode sharia law in Indonesia. So, even today in Indonesia, there are two major groups. There are modernist Muslims who have an affiliation to a group called Muhammadiyah, and traditional Muslims are inspired by the thousand-year-old customs. You know how Indonesia mixes its whole heritage and history with its Islamic identity. It is largely because the Dutch treated this conception of law very differently from the British.

There is also a talk about decolonization, and we have seen different quarters talking about it, including the judiciary. One of the recently elevated judges mentioned that we need to decolonize our legal system in his speech. The idea of the UCC has secular Christian historical roots, so do you think that drafting UCC would invite Christian techniques and tools?

I think it differently. I don't think it's Christian; I think it's Roman. Roman dealt with diversity in its history differently. If you remember, Romans came up with this conception of codification like the Code of Justinian etc. Rome was also extremely diverse. So it responded with the codification technique, which was imposed from the top-down. That's the Roman way of doing things. Modernization in Europe was inspired by the Romans through the

renaissance.

The other way is the pre-codification in ancient cultures, which addressed these issues, especially in India. The Mauryans and the Ashokans addressed this question of diversity and also forged this diversity in the process! How did we do it? One way is codification. Another way of doing it you set out the individuals' rights and set them up on stones everywhere. Let people follow their customs, but if they are found foul of your codes, then you take action.

So it's like you have certain rights, and then there are the rights the king gives, but frame it in the form of duties. It's more like a charter. The Ashokans and Mauryans were more like charters, and that is why when people talk about the British making a mistake, they mean the British read something like Manusmriti as a code. But for us, Smriti is not code, but it was a broader course of action one should follow; in the end, it was decided what the dharma of those specific times was to which we were subjected. Manusmriti was like a driver's manual, or it's the way you sing Indian classical music. Western classical music is codified, but in Indian classical music, what you can do and cannot do is given; the rest you can decide as per the situation. And I think that's how we approach our social laws. I think we live in a modern age, and there are some things to be said about modernity, uniformity, codification, and penal code reformation.

While drafting the UCC, what should be the government's consultative process?

The first thing we need to do is consult across the board and consult communities. I think that's the only way to have a UCC that would be widely accepted. There is a large variety of customs within the Hindu community, customs in Muslims and Christians and a lot we still share irrespective of the





interventions by the British to separate, to put religions in the box divorced from culture. But I think it's doable. In today's age, no one can make a case that women should be discriminated against in succession, marriage, divorce, and adoption and argue that this is personal. In any custom or tradition, and I am sure in the Hindu traditions, too many people would say certain laws or customs are god-given, but any custom against women is wrong.

Once the consultative process is done, the drafters are supposed to develop an overarching board framework by being sensitive to and inclusive of community-specific rituals, practices, and traditions while also providing a broad overarching framework that is inclusive for all? What could be the basis of such draft legislation?

There are two ways to do it: we have a modern bill that we circulate widely or a charter. But the way forward decided is to be decided by circulating a modern bill followed by consultation. You can't

say women will not get their rights or a man will marry four times.

If this Bill is passed, would any violation be addressed by the court?

Any legal dispute will have to go to the courts, and therefore, these civil rights would be decided by the court. Uniform civil code is available across the board. How you frame its contours and formulate it is to be seen. There are genuine issues because we have institutions like Hindu undivided family, others in Kerala, in parts of the northeast.

So along with the code, whether you will have civil courts or whether you will have special machinery to implement it is to be figured out. I think having a piece of machinery built within the act would be better.

Any final remarks?

I think UCC is crucial in making India a modern state. Whether we like it or not, we cannot go back from here. We have to go forward, keeping our traditions

intact to the extent possible. But to have a workable modern state, we need to have the UCC. That has been in the formulation of the constitution, and that's something we should stand by because no one can ever argue that there should be gender-based discrimination. UCC needs to come up, whether in the form of codified legislation or like a charter. It's great that young people are thinking about it and openly talking and discussing it. It was a taboo subject, and if you even mentioned it, you were put in a box and treated like a pariah even when it was one of the foremost demands of the constitution. I remember reading articles of the 80s when some of the great secularists believed that we needed a uniform civil code. And they backed it because it would benefit the women who have been marginalized. The poorest and the weakest are most affected by its absence. It's time to move towards it. The faster, the better.

**Interviewed by: Yashowardhan Tiwari,
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Implementing Uniform Civil Code Will be a Befitting Tribute to Ambedkar

Only a couple of weeks ago, the nation paid rich tributes to the maker of our Constitution B.R. Ambedkar on the occasion of his birth anniversary. The timing for a national conversation on the implementation of Uniform Civil Code could not have been better. With the chief ministers of crucial states like Uttarakhand, Uttar Pradesh and Himachal Pradesh expressing strong intentions of having a Uniform Civil Code, a debate in this direction seems to have begun getting traction among the political and the academic class too.

Establishing a Uniform Civil Code is a constitutional prerogative and not merely a rhetorical narrative and is extremely significant from the perspective of equality in true sense. There is a robust foundation for UCC in the constitutional enumeration. Before we get into Article 15 that prohibits any sort of discrimination on the grounds of religion, race, caste, sex and place of birth etc. and Article 44 that categorically states that *“The state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India”*, I would draw your attention towards the preamble of our Constitution that is considered its soul and spirit and that categorically announces equality of status and opportunity. Moreover equality, beyond the idea of Constitution, has been a civilisational priority for us as a nation. The life and times of Jyotiba Phule, Savitribai Phule, Kabir and Ravidas are indicative of this deep-rooted faith in the notion of equal treatment for everyone regardless of caste and gender.

Equality is a constitutional promise and has been a matter of judicial contestations and political articulation in

the course of last seven decades. Is there equality of law when it comes to issues like marriage and inheritance? There is one criminal law in the form of Indian Penal Code, 1860 and The Code of Criminal Procedure, 1973. Then why not have one civil code governing issues of marriage, divorce and succession etc.?

For Ambedkar, equality was an article of faith that must not be compromised. With respect to personal laws, he observed, *“I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights.”*

Ambedkar has on multiple occasions spoken against the prevalent injustices faced by Muslim women on an everyday basis. In his book, *Pakistan or the Partition of India*, he has observed on pages 220-221 that *“As a consequence of Purdah system a segregation of the Muslim women is brought about. Purdah deprives Muslim women of mental and moral nourishment. Being deprived of healthy social life, the process of moral degeneration must and does set in.”*

There were protests in defence of Hijab earlier this year. I am certain Ambedkar if alive today would have vehemently disagreed with those supporting medievalism in the name of personal autonomy. In *Pakistan or the Partition of India*, Ambedkar further writes, *“The existence of social evils among the Muslims is distressing enough. But far*

more distressing is the fact that there is no organized movement of social reforms among the Muslims of India on a scale sufficient to bring about their eradication ... they oppose any change in the existing practice.” This, in fact, has been the biggest roadblock in the implementation of the UCC.

The Congress party is single-handedly culpable for institutionalising this politics in India. Be it the reversal of the progressive Shah Bano verdict in 1985 that mandated maintenance and support for divorced Muslim women to the tacit approval of triple talaq and Article 370. The struggle for equality remains a fundamental challenge for women in the Muslim community. Politics of minority appeasement is primarily responsible for the perpetuation of this struggle. The abolition of triple talaq is a case in point like the revocation of Article 370 in the Constitution of India that discriminated against women of Jammu and Kashmir.

Uniform civil code is an idea whose time has come. The CM of Uttar Pradesh Yogi Adityanath has announced that the government will hold Quami Sammelans to educate the masses on the merits of the UCC — the process of dialogue and discussion has started. Instead of mindless opposition, people or institutions who are against the idea of UCC must come forward and have a meaningful and solution-centric debate on the issue in the ultimate interest of the society.

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No Uniform Civil Code, No Secular India!

The word 'Secular' in my personal opinion is the most misinterpreted and misused word in Indian politics.

As Indians, we have been taught that secularism is the acceptance of all religions in matters of governance of a nation. However, it is a far cry from the clinical definition of the term 'secularism'. Secularism is the acceptance of no religion in matters of governance.

I would request my fellow Indians to pick a dictionary and correct your understanding of the definition of the word 'Secular'.

For decades we have been fooled into thinking that it means acceptance of all religions as equals. No, it does not mean acceptance of all religions, it means acceptance of no religions in matters of governance.

A government of a secular nation must not see a citizen through the eyes of religion but as a citizen of the nation.

Religion cannot define the nationalism or rights of a citizen. To a secular government, a citizen being a Hindu, Muslim, or Christian should not be moot criteria to be considered for government benefits.

For India to be true to its secular image, then it is imperative that the Narendra Modi-led Indian government make the Uniform Civil Code (UCC) a reality in India.

The UCC means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly. They cover areas like- Marriage, divorce, maintenance, inheritance, adoption, and

Let us take a look at the UCC in Goa:

- Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation.
- The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).
- Every birth, marriage, and death have to be compulsorily registered. For divorce, there are several provisions.
- Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.
- During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple.
- Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

succession of the property.

The principle of the UCC is laid down in Article 44 of the constitution under the directive principles of the state policy. The architects of the Indian constitution have been in the support of the implementation of the UCC as well as the Supreme court of India has also stated the dire need for the implementation of the UCC in several landmark judgments.

UCC is a step toward strengthening India's secularism

The UCC will Integrate and Unite India-India is a country with many religions, customs, and practices. A uniform civil code will help in integrating India more than it has ever been since independence. It will help in bringing every Indian, despite his caste, religion, or tribe, under one national civil code of conduct.

The UCC will also help in reducing vote bank politics that most political parties indulge in during every election.

By allowing personal laws we have constituted an alternate judicial system that still operates on centuries-old values. A uniform civil code would change that. Religious personal laws are misogynistic in nature and by allowing old religious rules to continue to govern the family life we are condemning all Indian women to subjugation and mistreatment. A uniform civil code will also help in improving the condition of women in India.

All the laws related to marriage, inheritance, family, land, etc. should be equal for all Indians. UCC is the only way to ensure that all Indians are treated the same.

A UCC will not limit the freedom of people to follow their religion, it just





means that every person will be treated the same and all citizens of India have to follow the same laws regardless of any religion. It simply means that India will not be burdened by religious biases but look at every Indian citizen as a citizen.

The task of actually devising a set of rules that will govern all communities is a very formidable and tedious one considering the vast range of interests and sentiments to be accounted for.

The problem with the implementation of the UCC is that the content of UCC has not been spelled out leading minorities to believe that it is a way of imposing majority views on them. For years the nation lacked the political will to work towards implementing the UCC because of the sensitivity behind the issue.

Different religious communities have different personal laws which lead to the politicization of the UCC debate. Most detractors of UCC moot personal laws are derived from religious beliefs. They maintain that it is prudent not to disturb

them, as this runs the risk of engendering a great deal of animosity and tension between various religious communities. Also, India being a secular country guarantees its minorities the right to follow their own religion, culture, and customs under Articles 29 and 30. They argue that implementing UCC will contravene these articles.

Detractors argue that India is secular so infringing on their personal laws is anti-secular. But intriguingly, most detractors' definition of secularism is the misinterpreted Indianized definition of secularism. Secularism is not the acceptance of all religions in matters of governance but it is the acceptance of no religion in matters of governance. Therefore, the UCC is the perfect fillip to India's secular image. India has one law for its citizens.

I see UCC, not as a means to target anyone based on religion, caste, or sex. It is not an emotive issue that needs to be used to gain political advantage. It is

not a majority or minority protection issue, it is simply about ensuring every citizen irrespective of the caste, creed, and sex is treated with human dignity and treated fairly. Most of our personal laws have undoubtedly failed in their duty to uphold human dignity irrespective of caste, creed, and sex.

India needs to encourage a progressive and broadminded outlook among the people to understand the spirit of the UCC. For this, education, awareness, and sensitization program are a must. Most importantly, the UCC should be drafted by not keeping in mind the best interests of all religions but the rights of a citizen of our country.

For India to be truly secular it needs to implement the Uniform Civil Code. By doing this India will rise above the burden of religious biases and be governed by principles of secularism.

**Author: Savio Rodrigues,
Founder of Goa Chronicle and
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An argument in favour of Uniform Civil Code

Introduction

India is a diverse country with many ethnic groups and faiths where people from many cultural origins and customs are born. This variety is reflected through our legal system that takes religion into account and creates the basis for personal laws. The Uniform Civil Code, often known as the UCC, calls for the development of a single policy for the country that would adhere across all religious sects in domains such as marriage, divorce, inheritance, etc.

For more than a century, the subject has been at the heart of political discourse and discussion. It has been a significant agenda for many political parties in the country, striving for robust legislation in the parliament. However, there is a crucial facet of legality while such discussions exist, so let us dive into that and understand the issue in depth.

Legal Relevance

When we look at the genesis of UCC, we can see that it was influenced by Europeans who had established similar laws in the 19th century¹. The French code of 1804 was notable because it was one of the first to replace all types of existing customary or statute laws with a unified code.

Article 44 of the Directive Principles of State Policy which is enshrined in the Indian Constitution, states that it is the state's responsibility to ensure UCC for all people; a statement arises on this front referring to it as "one country, one rule". The primary goal of implementing such a code in India is to create legislation that governs all personal affairs, regardless of faith. While an Article in the Constitution appears to be highly forthcoming, there are a few

inherent problems. One of them is that if the creators of the Constitution intended to apply UCC in India, making it part of the guiding principles was not ideal because these principles are spelled forth in Part IV of the Constitution, which is regarded as guidelines rather than enforceable rules.

While the legislature has been pushing for such a code, the country's apex court is no different, as it has always supported the UCC. This backing can be seen as early in 1985's historic landmark *Shah Bano* judgment when the court highlighted the issues faced by women in distress and thereby stated that there should be a uniform law that addresses the issues rather than basing it on what a particular religion. The Apex Court in *Shah Bano* judgment observed, "There is no evidence of any official activity for framing a common civil code for the country. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies." A similar progressive view can be noticed, which was given by J. Krishna Iyer in the *Bai Tahira* case³ reiterating the Ambedkarian viewpoint on such a code that rather than it being a majoritarian endeavour, the common code should be intended as a compilation of all the personal laws across the paradigm. One judgment of the Supreme Court that specifically needs a mention here is *Sarla Mudgal vs. Union of India*⁴, in which the Court very clearly stated, "When more than 80% of the citizens (i.e. Hindus) have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in

the territory of India." Espousing a similar viewpoint on the need for a uniform civil code, the Supreme Court in *ABC vs. State (NCT of Delhi)*⁵ stated, "It would be apposite for us to underscore that our Directive Principles envision the existence of a uniform civil code, but this remains an unaddressed constitutional expectation." One of the most landmark views on the Uniform Civil Code from the Supreme Court of India came in 2019 in the matter of *Jose Paulo Coutinho vs Maria Luiza Valentina Pereira*⁶, when it was deciding a matter relating to properties of Goans, in which the Court clearly stated that "...the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard." The Court further added, "Though Hindu laws were codified in the year 1956, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations of this Court in the case of *Mohd. Ahmed Khan vs. Shah Bano and Sarla Mudgal & Ors. vs. Union of India & Ors.*"

The judiciary has encountered several challenges in preserving the social changes in matters of personal affairs as law attempts to implement through different enactments. Surprisingly, the use of basic rights is used to challenge such enactments. It becomes incredibly difficult to assess the effects of such social changes on a wide scale since one society may be immune to such social change owing to religious canons. As a



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result, it is critical that there be a strong UCC framework in place so that various religions do not have different ways to discriminate under the guise of personal laws.

Merit & Underlying Issues for Implementation

There are a plethora of merits for UCC, but first and foremost, it impacts the separation of law and religion in a society like ours. There would be no discrimination if everyone was treated equally. If a single law applies to everyone, they will be treated equally. Everyone will be treated in a fair manner if there is a single law for marriage, property, and divorce. Codification of disparate laws and legal standards, religious edicts, customs, and cultural norms a fixed recognition and make laws easier to enforce.

Some underlying issues exist and might create a considerable hurdle in implementing the UCC. Diverse religions have varied religious faiths that are founded on the religion's core practices, making it impossible to apply

a primary platform of practices for every religion. By seeking to adopt this code, the parliament should not just replicate the western paradigm of law and instead have a different approach that caters to all the stakeholders. The most critical issue is a misunderstanding about the objects of UCC, which is caused by a lack of education, unreasonable religious beliefs, and so on. Minorities are further misled into believing that the UCC will destroy their religious traditions and force them to follow the religious practices of the majority.

Conclusion

One must determine what drives the underlying jurisprudence of UCC, whether it is abolishing gender-based inequities embedded in all personal laws or the motto discussed earlier on 'One Nation, One Law'. In a diverse culture like ours, comparisons are inevitable. These segregated personal laws are unlikely to be affected by others and have the potential to stifle any scope of societal improvement. As a result, there is an inherent necessity for such a code

that prevents such atrocities.

There is a broad misconception amongst the populace who believe that if the legislature introduces UCC, it will incline towards the majoritarian view. However, this view can be mitigated by following a proper structure as J. V.R. Krishna Iyer has stated⁷: *“there are several excellent provisions of the Muslim law understood in its pristine and progressive intendment which may adorn India's common civil code”*.

Suppose the Indian legislature does finally introduce the UCC. In that case, it should do so in accordance with the overall development of society, including women, and by balancing the set objectives of Articles 51 A (f) and 51 A (e) of the Constitution, which deal with the aspects of valuing and preserving a country's rich heritage of composite culture of a country like ours.

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Image credit: Zerbor



Uniform Civil Code: Past, Present and Future

After 75 years of Indian independence, the minority communities may regard a unified code as a "fait accompli."

What is Uniform Civil Code?

The phrase "uniform civil code of India" refers to the notion of an overarching civil law system in India. The uniform civil code administers the same set of secular civil laws to all individuals, regardless of religion, caste, or tribe. This supplants citizens' right to be ruled by various personal laws depending on their religion, caste, or tribe; such codes are in effect in the majority of modern nations.

These uniform laws will relate to the acquisition and administration of property, marriage, divorce, adoption, religious conversion, etc. that will apply to all people of India, regardless of community. While the precise dimensions of such a unified code are yet to be brought out, it would contain the most contemporary and progressive parts of all existing personal laws while rejecting those that are regressive.

The Past (1940-1985)

The UCC's origin can be traced back to colonial India, when the British government issued the Lex LOCI report of 1840 emphasizing the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts, specifically recommending that personal laws of Hindus and Muslims be excluded from such codification.

In 1941, the government formed the B N Rau Committee to codify Hindu law due to an increase in laws dealing with personal concerns at the end of British rule. The Hindu Law Committee was tasked with investigating the

requirement of common Hindu laws.

The group advocated, in accordance with scripture, a codified Hindu law that would grant equal rights to women.

Except for the state of Jammu & Kashmir, the Hindu Marriage Act of 1955 applied to the whole country of India. The Hindu Marriage Act had the effect of prohibiting polygamy among Hindus and increasing the entitlement of divorced wives to maintenance or alimony. Except for Muslims, Christians, Parsees, and Jews, the statute applies to everyone in India. Since Jews and Parsees are a small minority, they have remained the only big community with a separate religious code.

The legal practice of excluding Muslims continued with the passing of the Dowry Prohibition Act in 1961, which expressly excluded "dowry" or "Mehr" in the case of those to whom Muslim personal law (Shariat) applied. During a discussion over the modification of the criminal process code in 1973, it was pointed out that in instances involving Muslims, the court should take into account whether the lady had received support under personal law. For Muslims, this is known as the **iddat** period, which lasts three months following the divorce.

Whereas for a man who dies intestate under the Hindu Succession Act, the general principles of succession under the Act 1956 are that heirs in Class I succeed before heirs in other classes. A 2005 amendment to the Act provides additional descendants, raising females to Class I heirs. The female is given the same portion that a male is given.

The constitutional validity of the Uniform Civil Code

Secular activities such as inheritance or divorce, which are governed by personal laws, should be kept distinct from religion. A unified legislation established in this manner and made applicable to all would, on the other hand, enhance national unity. It was pointed out at the time that, first, the Common Civil Code would violate the fundamental right to religious freedom as stated in Article 25 of the Constitution of India, and second, it would amount to tyranny over the minority. The first objection is incorrect since secular activity involved with religious practice is excluded from this guarantee, and because personal laws (as stated from this point of view) apply to secular activities, they fall within the state's regulatory jurisdiction.

Concerning the second issue, nowhere in Muslim majority nations has the personal law of each minority been acknowledged as so sacred as to preclude the adoption of a civil code. In Turkey and Egypt, similar rights are not granted to minorities.

Judicial Approach

In the case of **Mohammad Ahmed Khan v. Shah Bano Begum**¹, widely known as the Shah Bano case, the Supreme Court instructed Parliament for the first time in 1985 to create a Uniform Civil Code. In this case, a penurious Muslim woman sued her husband for support under Section 125 of the Code of Criminal Procedure after he gave her triple talaq. The Supreme Court ruled that a Muslim woman had a right to maintenance from her husband under





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Section 125 of the Code of Criminal Procedure. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y. V. Chandrachud observed that *"A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies"*.

Following this ruling, there were widespread discussions, gatherings, and protests. The Shah Bano case ruling was reversed by the then-Rajiv Gandhi-led government through the Muslim Women (Right to Protection on Divorce) Act, 1986, which limited a Muslim woman's right to maintenance under Section 125 of the Code of Criminal Procedure.

The argument raised before Hon'ble Supreme Court in **Mary Roy v. the State of Kerala**² was whether certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Art. 14 of the Constitution. According to these provisions, upon the death of an

intestate, his wife was only entitled to a life interest that terminated with her death or remarriage, as well as his daughter. The Travancore Act was also said to have been replaced by the Indian Succession Act of 1925.

In **Sarla Mudgal v. Union of India**³, Hon'ble Supreme Court directed the Union of India to "encourage" the development of a Uniform Civil Code and report back to it by August 1996 on the progress made. "Those who preferred to remain in India after partition fully knew that the Indian leaders did not believe in two-nation or three-nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity on the basis of religion," the Supreme Court stated.

When a Christian priest challenged the constitutionality of Section 118 of the Indian Succession Act in July 2003, Hon'ble Supreme Court reminded the government of its constitutional duty to establish a Uniform Civil Code. In 1997,

the priest from Kerala, John Vallamattom, filed a writ case claiming that Section 118 of the aforementioned Act was discriminatory against Christians since it imposed unjustifiable limits on their willful donation of property for religious or charitable purposes. The bench, comprising of Hon'ble Chief Justice of India V.N.Khare, Justice S.B. Sinha, and Justice A.R. Lakshamanan, declared the Section unconstitutional and discriminatory.

Finally, Hon'ble Supreme Court in **Shayara Bano & Ors. v. Union of India & Ors**⁴. by a 3:2 majority declared Triple Talak, Nikah Halala, and polygamy to be unconstitutional under Muslim personal law, citing violations of fundamental rights under Articles 14, 15, and 21 of the Indian Constitution.

Social impact of Uniform Civil Code

If indeed the literal meaning of 'secularism' is to be invoked instead of the pseudo half-baked meaning that is usually raked up by certain sections

today, a unified civil code is all the more desired. Such a code would eliminate the difference in marriage laws, streamline the Indian legal system, and make Indian society more homogenous. It will decouple law from religion, which is a very desirable goal in a secular and socialist society. It will assist to build a national identity. The unified civil code will include universally applicable rules based on social justice and gender equality in family affairs.

According to the Committee on the Status of Women in India⁵: "The continuance of various personal laws which accept discrimination between men and women violates 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.

In 2003, the then Hon'ble Chief Justice of India while declaring Section 118 of the Indian Succession Act as unconstitutional rightly observed that "*Article 44 provides that the State shall endeavor 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 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*".

The crux of the dispute swirling around UCC has been secularism and religious freedom as specified in the Indian Constitution. Maulana Kahkashan Waqar, a Pasmanda activist, claims that anti-UCC propaganda teaches Muslims that they would be unable to bury their dead and must instead be cremated, that they will be forced to adopt Hindu

customs during the marriage, that they will be unable to wear skull caps, and that their faith will be wrecked. A deeper examination reveals, however, that the UCC only emphasizes the provision of equality for all citizens of the country in subjects such as marriage, divorce, maintenance, inheritance, and succession. It will not only apply to Muslims, but also to other parts of society (Hindus, Sikhs, Buddhists, Jains, Lingayats), minorities, and many tribal communities.

There is a pressing necessity to investigate personal religious laws from a human rights perspective. India has often stated its intention to respect the normative system of human rights. Personal laws, on the other hand, have frequently been maintained beyond the scope of fundamental rights by passing the obligation of eliminating discrimination in personal laws to parliament.

The Best Examples

The developed nations, such as the United States, Canada, Australia, the United Kingdom, and Russia, have embraced the Uniform Civil Code as a progressive legislation in order to improve their society, culture, and religion, as well as to eliminate prejudice across populations. The only reason these countries can attain their greater ambitions is because of the Uniform Civil Code.

Uniform Civil Code in Goa

Goa is the only state in India with a Uniform Civil Code, as the Special Marriage Act of 1954 applies across the state. This was enacted by the Portuguese in 1870 as Goa family law, but following Goa's independence, it was kept and became the Special Marriage Act in 1954. This marriage statute allows for the civil marriage of two people of opposite sexes, regardless of faith. This legislation prevails among Indians, allowing them to marry beyond

the conventions of their personal law. In 2019, Chief Justice of India (CJI) S A Bobde praised Goa's Uniform Civil Code and urged "intellectuals" immersed in "academic discourse" to visit the state to learn more about it.

Even the Uttarakhand has made good the poll promise of implementing UCC in the State.

The Muslim community, which perceives any move to establish a UCC as an attack on its religious liberties, has always been the source of the most vocal societal resistance. In this regard, the discussion in India appears to have shifted more in favour of the UCCs, with recent Supreme Court verdicts calling for a Uniform Code failing to elicit the protests and alarms that accompanied the Shah Bano case in 1985. After 75 years of Indian independence, the minority community may regard a unified code as a "*fait accompli*."

The question to consider here is that since criminal laws that apply equally to all Indians do not harm a Muslim's faith and belief (iman), how can someone's belief in Islam be jeopardized if a uniform legislation is implemented?

If there is a single law for marriage, property, and divorce, everyone will be treated fairly. If there is one rule for everyone, everyone will be equal, and if everyone is equal, there will be no discrimination. During elections, candidates solicit votes based on these divisions. The UCC may lead to the utilitarian outcome of eradicating conditions of the community, conflict amongst various communities, and help India evolve as a democracy.

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Marching towards Unification

Article 44 (Part IV) of the Constitution states: “The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India”. Although Article 44 comes under the Directive Principles of State Policy which are not enforceable by any court of law, they are fundamental to the governance of the country to establish an equal and democratic society. The question of the requirement and suitability of the Uniform Civil Code has been in the public domain for a very long time. The Bharatiya Janata Party has consistently been an advocate of the Uniform Civil Code as a measure of fulfilling the ideals of the Constitution. However, the inception of this debate goes back to the colonial era when the Lex Loci Report (October 1840) stressed on the necessity of uniformity in criminal laws. Accordingly, laws related to crimes, evidence and contracts were to be codified while personal laws of Hindus and Muslims pertaining to marriage, inheritance, maintenance, etc. were kept distinct from each other. The Queen's Proclamation in 1858 further sealed this distinction as a measure of “non-interference in religious matters”. What remained underlined in this stance was an inherent politics of divide-and-rule that fuelled the British presence and authority over Indian subjects.

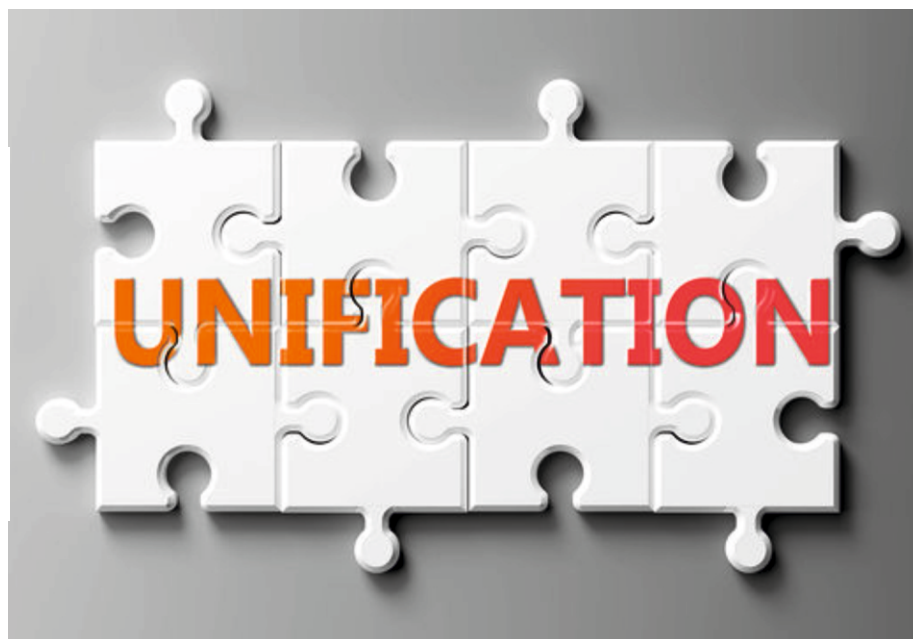
Babasaheb Ambedkar while drafting the Constitution was sceptical of the distinction maintained by the personal laws, especially with regards to the implications it could have for women and religious minorities. Indeed, he stated that although the Uniform Civil Code was suggested as a part of the Directive Principles, it was incorporated in the Constitution with the intention that it would be fulfilled when the nation would be ready to accept it. I believe the

time has finally arrived. Moreover, to put the arguments of political-viabilities at rest, it has always been understood that the implementation of the Uniform Civil Code could never be done without keeping the interests of all the groups at stake into consideration. This is also in line with the Sangh's concern of overarching consent from various communities regarding the passing of the Code. Significantly, implementing the Uniform Civil Code can actually be a source of boosting gender justice and women empowerment specifically in minority religious communities as it could avert gender-based biases in terms of marriage customs, property inheritance or adoption practiced in the name of religious beliefs. The Hindu Code Bill and Hindu Succession Act (1956, 2005) can be cited at this point as major examples of such positive developments whereby a uniform system of inheritance challenged the gender discriminatory practices in the Hindu personal laws. But the question that remains is- did the changes brought about by Hindu Code Bill necessarily have to stay limited to the Hindus only? In 1951 Shyama Prasad Mukherjee Ji had vehemently pointed out the dangers of such a measure in the secular framework of Indian democracy whereby codification of only one religion's personal laws was nothing short of problematic. Moreover, the dangers become even more apparent when the personal laws, so blatantly protected for appeasement politics, are largely archaic and unconstitutional. What good has personal laws done to women like Shah Bano, who only demanded what was rightfully hers after divorce or Shayara Bano, who found herself in a state of destitution after her husband pronounced instant divorce? These two names are merely the surface

representations of many unnamed and helpless minority women who find no legal outlet to claim justice whilst belonging to a nation that promises rights to Equality and Freedom regardless of their gender. Indeed, as Veteran BJP leader and former Prime Minister Sri Atal Bihari Vajpayee ji had contended, many Islamic nations around the world have also amended their personal laws in accordance to the changes of time. Yet, India has not found the political space to reason with the minority groups to codify Muslim or Christian Personal laws for the larger well-being of the nation. Just like the Muslim women, Christians under the Canon Law remain isolated in expecting justice as rules of marriage, divorce and annulment for Roman Catholics continue to be determined by the Church rather than a legal measure. Here, the significant question of individual rights vis-a-vis community membership looms large. Years of fearful political decisions by the Congress and their Leftist intellectual counterparts, cantered around appeasement rather than larger national-progress, whereby the unresolved dilemma of individual rights falling short of community membership has led to a lag that we are still trying to recover from. And the only answer to this dilemma is a uniformity of personal laws that does not discriminate against an individual's rights to freedom over and above the need to protect community-based politics.

A major indicator of the potentials that uniformity in civil codes could render was delivered in 2019 when Honorable Prime Minister Sri Narendra Modi led Indian democracy to a historic victory by passing the Triple Talaq Bill or the Muslim Women (Protection of Rights on Marriage) Act, 2019. The Act freed Muslim women from the age-old





religious dictums that rendered them invisible and powerless in terms of their husbands' ability to divorce them simply at the triple pronouncement of the word 'talaq'.

The main highlight of the Uniform Civil Code that should not be missed amidst the conundrum of the debate regarding its political suitability is its nationalist fervour. What we now have as a plethora of isolated and segregated laws would be simplified in the form of a uniform and equal legal measure. Irrespective of one's religious faith or identity, every individual would be placed under the common banner of simply being an Indian citizen. And, as India is making a mark in the world as one of the fastest growing nations, it is imperative to free ourselves from the age-old archaic values that guide personal laws. Uniformity in codified laws will help integrate the nation beyond all boundaries of identities and help in achieving the real ideal of a democratic

society. Furthermore, uniformity of the personal laws will result in a more coherent legal system facilitating efficient administration.

The Bharatiya Janata Party has always been dedicated to furthering the interests of establishing a unified nation. The belief in the possibility of One Nation-One Code has been further strengthened by the powerful leadership of our Honorable Prime Minister Sri Narendra Modi ji who has already achieved various milestones in taking India to greater heights. What began as a brave Party stance under the leadership of Atal Bihari Vajpayee ji in 1998, when it was first made part of BJP's manifesto, has evolved into a practical possibility under the relentless efforts of the BJP at large. Bringing forth the Uniform Civil Code has been one of the core goals of the Party and Sangh ever since independence. However, the idea of Uniform Civil Code that we have now is an outcome of political observations and

visualizations of eminent leaders like LK Advani Ji and Arun Jaitley Ji. As Home Minister Amit Shah Ji reiterated in the 2019 election manifesto, Bharatiya Janata Party is dedicated to the cause of equality and justice and it believes that there cannot be gender equality till India adopts a Uniform Civil Code, drawing upon traditions and harmonizing them with the requirements of the modern times. Over the years, the BJP has proven its dedication to the cause with Private Member Bills on Uniform Civil Code being presented in both Houses of Parliament amid severe opposition and criticism. Nevertheless, the struggle for a society where every citizen abides by a single law irrespective of their religion, caste or any other aspect of their identity continues to be our main agenda. The state of Goa has already demonstrated its success in implementing the progressive measures of Uniform Civil Code. Uttarakhand now seeks to take the baton forward and pioneer the interest of realizing the spirit of the Constitution, leading the nation towards a future of social harmony.

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समान नागरिक संहिता: मानवाधिकारों का रूप

23 नवंबर 1948 को भारतीय संविधान में अनुच्छेद 44 को जोड़ा गया था। इस अनुच्छेद के माध्यम से सरकार को यह दिशा-निर्देश दिया गया था कि सरकार पूरे राष्ट्र के लिए एक समान नागरिक संहिता (यूसीसी) का निर्माण करे लेकिन दुर्भाग्यवश स्वार्थ और वोट बैंक की राजनीति के कारण अभी तक ऐसा कोई प्रावधान नहीं हो पाया।

भारत एक पंथनिरपेक्ष राष्ट्र है लेकिन पंथनिरपेक्ष राष्ट्र होने के बावजूद भी कुछ कानून धर्म के आधार पर बंटे हुए हैं। एक पंथनिरपेक्ष राष्ट्र में कानूनों का धर्म और मज़हब के आधार पर बंटे होना राष्ट्र और समाज के लिए हमेशा से घातक रहा है। यदि भारतीय सरकार भारतीय राष्ट्र में समावेशी भावना और समानता के सिद्धांत को स्थापित करना चाहती है तो उसका एकमात्र उपाय समान नागरिक संहिता है।

एक देश, एक कानून का सिद्धांत ही भारतीय राष्ट्र और भारतीय समाज को सच्चे अर्थों में समावेशी, प्रगतिशील और समानतावादी बना सकता है।

यदि हम समान नागरिक संहिता पर विचार करें तो हम पाते हैं कि इस कानून के लागू न होने से कई समस्याएं खड़ी हो सकती हैं।

मुसलमानों के पर्सनल लॉ में बहुविवाह की छूट है लेकिन अन्य धर्मों में ऐसा नहीं है बल्कि अन्य धर्मों में बहु विवाह को अपराध की सूची में रखा गया है। ऐसे में कई लोग दूसरा विवाह करने के लिए इस्लाम मज़हब को अपना लेते हैं। धर्मांतरण के मुद्दे के कारण कई बार भारतीय समाज को तनावपूर्ण स्थिति का सामना करना पड़ा है।

मुस्लिम लड़कियों की वयस्कता भी एक मुद्दा है। मुसलमानों के पर्सनल लॉ में लड़कियों

की वयस्कता की उम्र निर्धारित नहीं है इसलिए 18 से कम उम्र की मुस्लिम लड़कियों की शादी एक आम बात है। कम उम्र में शादी होने के कारण मुस्लिम लड़कियों को शिक्षा से वंचित होना पड़ता है और कम उम्र में शादी और प्रेग्नेंसी के बाद उनके स्वास्थ्य में प्रतिकूल प्रभाव पड़ते हैं। समान नागरिक संहिता का न होना लैंगिक भेदभाव को जन्म देता है। यह स्त्री-पुरुष समानता पर एक प्रश्न चिन्ह है।

समान नागरिक संहिता की गैरमौजूदगी उत्तराधिकार की व्यवस्था को एक जटिल मुद्दा बनाती है। मुस्लिम पर्सनल लॉ में उत्तराधिकार व्यवस्था, पैतृक संपत्ति में स्त्री-पुरुष के बीच भेदभाव है। पैतृक संपत्ति में पुत्रियों के अधिकार और विवाह के बाद अर्जित संपत्ति में पत्नी के अधिकार शून्य है। स्त्रियों से जुड़े इन दो मुद्दों को मुस्लिम



Image credit: BCFC

पर्सनल लॉ ने अपरिभाषित छोड़ा हुआ है। समान नागरिक संहिता का कई राजनीतिक दल धर्म के आधार पर विरोध करते हैं। उनका कहना है कि भाजपा समान नागरिक संहिता को लागू करके मुस्लिम पर्सनल लॉ में हस्तक्षेप करना चाहती है, जो अनुच्छेद 25 का उल्लंघन है।

भारतीय संविधान के अनुच्छेद 25 में प्रावधान है कि सभी व्यक्तियों को अपने धर्म के पालन और प्रचार का समान अधिकार होगा। लेकिन इसी अनुच्छेद के दूसरे उपबंध में यह कहा गया है कि सरकार "सार्वजनिक व्यवस्था" (स्मरण रहे यूसीसी सार्वजनिक व्यवस्था के अंतर्गत ही आता है।), नैतिकता और स्वास्थ्य के आधार पर धार्मिक स्वतंत्रता पर प्रतिबंध लगा सकती है। कुछ सामाजिक कुरीति और बुराइयों के उन्मूलन के लिए सरकार धार्मिक मामलों में हस्तक्षेप कर सकती है और ऐसे प्रतिबंधों और प्रावधानों को धार्मिक स्वतंत्रता के अधिकार (अनुच्छेद 25) में हस्तक्षेप या उल्लंघन नहीं माना जाएगा।

बहुविवाह, उत्तराधिकार, कम उम्र में महिलाओं की शादी, महिलाओं का शिक्षा से वंचित होना, पैतृक संपत्ति, लैंगिक भेदभाव, विवाह के बाद अर्जित संपत्ति में स्त्रियों के अधिकारों का न होना। यह सब धार्मिक मुद्दे नहीं बल्कि मानव अधिकार से जुड़े हुए मुद्दे हैं। भारत में समान नागरिक संहिता का न होना मानवाधिकार का उल्लंघन है।

शंकर शरण अपनी पुस्तक 'भारत में प्रचलित सेक्यूलरवाद' में बताते हैं कि "संयुक्त राष्ट्र ने भी समान नागरिक कानून न बनाने के लिए भारत की छीछालेदर की। जनवरी 2000 में वहां 'महिलाओं के विरुद्ध सभी भेद-भाव के विरुद्ध सम्मेलन' (CEDAW) में कहा गया कि सुधार का काम संबंधित समुदायों पर छोड़ देने का मतलब है कि मामले को जहाँ का तहाँ छोड़ देना। यह महिलाओं के अधिकार के विरुद्ध ही नहीं, उस सिद्धांत के साथ दगा है जिस पर जून 1993 में भारत ने भी दस्तखत किए थे। भारत को सभी नागरिकों के लिए परिवार संबंधी एक समान

सेक्यूलर कानून बनाना चाहिए।"

समान नागरिक संहिता की स्थापना से मानव अधिकारों को एक सकारात्मक बल मिलेगा और भारतीय राष्ट्र में समावेशी भावना और समानता के सिद्धांतों की स्थापना होगी।

जब एक राष्ट्र में अलग-अलग धर्मों के लिए अलग-अलग कानून हो तो स्वतः ही उस राष्ट्र के लोगों में हीनभावना और अलगाववादी विचार जन्म लेते हैं।

समान नागरिक संहिता की स्थापना से बहु विवाह की प्रथा (मुस्लिम धर्म में) समाप्त होकर सभी के लिए 'एक पति और एक पत्नी' की अवधारणा लागू होगी।

अश्विनी उपाध्याय (अधिवक्ता, उच्चतम न्यायालय) अपने लेख 'समान नागरिक संहिता की पहल करे सरकार' में कहते हैं कि " 'एक पति और एक पत्नी' की अवधारणा लागू होगी और बांझपन या नपुंसकता जैसे अपवाद का लाभ सभी भारतीयों को समान रूप से मिलेगा।"

समान नागरिक संहिता लागू होने से स्त्री अधिकारों को मजबूती प्रदान होगी और स्त्रियों को एक बेहतर जीवन मिलेगा। शादी-ब्याह की उम्र हर धर्म की स्त्रियों के लिए समान होगी। कम उम्र में शादी जैसी समस्या से मुक्ति मिलेगी और जल्दी शादी होने के कारण उन्हें शिक्षा से वंचित होना पड़ता था, उससे वंचित नहीं होना होगा।

भारत के संविधान में सभी को समान अधिकार मिले हुए हैं लेकिन जब घर और परिवार की बात आती है तो भारतीय संविधान वहां गौण हो जाता है तथा धार्मिक रीति-रिवाज हावी हो जाते हैं। धार्मिक रीति-रिवाजों के निर्वहन का दायित्व स्त्रियों पर होता है जो आगे चलकर उनके शोषण का एक कारण बनता है। शादी, देहज तलाक ऐसे मुद्दों पर पुरुषों की प्रधानता होती है और स्त्रियों को दायम दर्जे में रखा जाता है।

मोहम्मद अहमद खान बनाम शाहबानो बेगम (1985), सरला मुदगल बनाम भारत सरकार (1995) ऐसे ही मुद्दे थे। शाहबानों को उसके पति ने तीन बार तलाक

बोलकर तलाक दे दिया था और सरला मुदगल केस में एक हिन्दू पति ने अपनी पत्नी को तलाक दिए बगैर इस्लाम कुबूल कर दूसरी शादी कर ली थी।

ये मुद्दे बताते हैं कि समान नागरिक संहिता के लागू होने से स्त्रियों को समाज में एक उचित स्थान मिलेगा जो मज़हब के रीति-रिवाजों में कहीं दब कर रह गया था और नारी शोषण का कारण बना था

भारतीय संविधान के अनुच्छेद 37 में स्पष्ट उल्लेख है कि नीति निर्देशक सिद्धान्तों को लागू करना राज्य की जिम्मेदारी है। भारत को एक धर्मनिरपेक्ष देश कहा जाता है। धर्मनिरपेक्ष राष्ट्र होने के बावजूद भी यहां धार्मिक आधार पर अलग-अलग कानून है। यदि भारत के संविधान की शासन व्यवस्था को देखे तो हम पाते हैं कि यहाँ आज भी हिन्दू मैरिज एक्ट, पारसी मैरिज एक्ट और ईसाई मैरिज एक्ट का प्रावधान है। भारत सच्चे अर्थों में तभी एक धर्मनिरपेक्ष राष्ट्र माना जाएगा जब यहां एक समान नागरिक संहिता होगी।

मोहम्मद अहमद खान बनाम शाह बानो बेगम (1985) के मामले में मुख्य न्यायाधीश वाई. वी. चंद्रचूड़ ने फैसले में लिखा था कि 'धार्मिक और मज़हबी आज़ादी हमारी संस्कृति की बुनियाद है मगर जो धार्मिक और मज़हबी रीति मानवता की मर्यादा, मानव अधिकारों की अवहेलना करती है, वह आज़ादी नहीं, शोषण और उत्पीड़न है।'

इसी प्रकार सरला मुदगल केस (1995) में सुप्रीम कोर्ट ने कहा था कि 'शादी-विवाह, संपत्ति उत्तराधिकार आदि मुद्दे धार्मिक और मज़हबी आज़ादी के तहत नहीं आते।'

वर्तमान भारतीय सरकार को चाहिए कि वह एक समान नागरिक संहिता बना कर उसे लागू करे ताकि स्त्री-पुरुष समानता को स्थापित कर महिलाओं को संवैधानिक संरक्षण मिले और मानव अधिकारों की मूल भावना को बल प्रदान हो।

लेखक: राकेश कुमार, पीएच.डी शोधार्थी,
प्रौढ़ सतत शिक्षा एवं प्रसार विभाग,
दिल्ली विश्वविद्यालय



UCC will bring commonality of law



Image credit: niroworld

After forming a new government in Uttarakhand, the Bharatiya Janata Party passed the proposal to implement the Uniform Civil Code in the very first meeting of the state cabinet. It also approved the formation of a panel for it. Since then, the question of UCC has been at the center of many debates again, not only in Uttarakhand but across India. But the question is if Uniform Civil Code was included in the constitution, then why it was not implemented in 1950 itself, and what will change if it is implemented.

Britishers brought Uniform Criminal Code, for example, the Indian Penal Code, 1860 and the Indian Evidence Act, 1872, and uniform commercial laws like Indian Contract Act, 1872, Specific Relief Act, 1877.

The field of personal law, which includes marriage, inheritance, divorce, maintenance, etc. of Indians, was not a priority for them.

Our Constitution contains Article 44

which mandates a Uniform Civil Code. Article 44 states, *“The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”*

When the Constitution of India came into force, Hindus, as well as Muslims, were governed by their personal laws. Possibly, under the Constitution, it was imagined that to further the aim of the Uniform Civil Code, all personal laws would be codified together.

But, in reality, Hindu Personal law was done away with the Hindu Code Bills that is, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956. Whereas, the Muslims continued to be governed by Muslim personal law.

During the debates on Hindu Code Bill in Parliament, many leaders accused Congress of being communal as Congress was not moving with the

Muslim Code bill. For example, J.P. Kriplani raised the argument that similar to the Hindu Code Bill, a Muslim Code Bill shall also come into force in order to, among others, empower women and bring them into the modern era.

Similarly, Dr. Rajendra Prasad, then President of India, vehemently opposed the Hindu Code Bill on the premise that such laws cannot be taken without taking into consideration the opinions of the masses. He even threatened to refuse to sign the law.

Prime Minister Jawaharlal Nehru did not pay any heed to such objections and said that time was not yet right as Muslims were not ready for reforms. The result is that Muslims are being governed by their personal laws to date. This is the best example of how Congress has always been synonymous with anti-secular.

The Supreme Court has always suggested the need for Uniform Civil Code. In Shah Bano judgment, the

Supreme Court made the following observations:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter... A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies."

Similarly, the Supreme Court in the Sarla Mudgal judgment expressed its disappointment over the attitude of the Congress government:

Pandit Jawaharlal Nehru, while defending the introduction of the Hindu Code Bill instead of a uniform civil code, in the Parliament in 1954, said "I do not think that at the present moment the time is ripe in India for me to try to push it through"... When more than 80%

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 "uniform civil code" for all citizens in the territory of India.

It is not that Hindus are at a losing end but the most harm is felt by Muslim women due to not having UCC. There has been significant empowerment of Hindu women by way of various legislations. For instance, Hindu Succession Act granted the right to Hindu daughters to have a share in coparcenary property. Unfortunately, Muslim women have not been similarly empowered. Although under the BJP government, a significant change in the position of Muslim women has been

brought about by banning the "Triple Talaq", it needs to go further to ensure the empowerment of Muslim women which can only be possible after enacting UCC.

Appeasement has done enough harm to this country and Muslim women in particular. The defense given by PM Nehru 70 years back cannot be justified now. We have to fulfill the constitutional goal of the Uniform Civil Code. This will help bring unity, integrity, commonality, and certainty of law just as it exists in the sphere of criminal and commercial law. This is the best time when Uniform Civil Code must be implemented.

Author: Krishna Kumar, Advocate



Uniform Civil Code from the Lens of International Human Rights Law

I. Introduction:

On 24th March 2022, the first Cabinet Meeting of the Government of Uttarakhand, chaired by Chief Minister Pushkar Singh Dhami, announced the formation of a committee of experts to implement the Uniform Civil Code (UCC) in the State. Further, the cabinet has also decided to constitute a committee of jurists, retired judges, enlightened people of the society, and other stakeholders would be constituted to prepare a draft of the 'Uniform Civil Code' for the State of Uttarakhand. The aim of the draft UCC would be to develop an equal law on matters like marriage-divorce, real estate, and succession for all citizens irrespective of religion. This progressive measure that the Uttarakhand government is spearheading aims to protect women's rights. There have been multiple debates about the UCC from a public policy perspective. However, this piece does not address this debate. Instead, this piece asserts that the UCC is not only a long-overdue measure for India but also a measure India is obligated to implement under international law.

II. India's International Law Obligations:

India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 9th July 1993. Once ratified, India has an obligation to follow the provisions of the CEDAW. Article 5(a) of the CEDAW states that it is an obligation of a State to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Such a modification in India needs to be made via the UCC.

In pursuance of its obligation to the CEDAW, India has been sending reports to the Committee on the Elimination of Discrimination Against Women (CEDW) on its progress in implementing the CEDAW. In turn, the Committee publishes reports that analyze India's progress, including a section on "Principal Areas of Concern and Recommendations." Initially, India had made a statement that it would follow a policy of non-intervention in the law of individual religious communities¹. However, in Report A/55/38 by the CEDW in 2000, it has been explicitly mentioned as a principal area of concern that such a policy of non-intervention has led to the development of "sexual stereotypes, son preference, and discrimination against women."² Further, the report recommends India to implement a UCC in line with its Directive Principles of State Policy³. It must be reiterated that the exact words "UCC" have been used in the CEDW Report.

Additionally, it is essential to note that India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10th April 1979. The United Nations Human Rights Committee (UNHRC) publishes periodic reports on the implementation of the ICCPR (similar to CEDW Reports on the implementation of the CEDAW). In the 1603-1606th Meeting of the UNHRC, it considered the third periodic report by India. The report severely criticised India for violating the right of women to non-discrimination under Article 2 of the

ICCPR. A direct reference was made to discriminatory personal laws, "religious norms and which do not accord equality in respect of marriage, divorce and inheritance rights." The report further recommended India to bring its laws in conformity with the ICCPR, and this can be done by adopting UCC, which will stop such discrimination.

India is a secular country. However, this does not mean specific laws which are discriminatory and inconsistent with the ICCPR and CEDAW can be allowed to exist to please certain communities. It is also essential to note that the usual argument of "non-intervention" given by the previous regimes in power in India is not an official declaration of either of the conventions.

III. Significance of International Law in India:

One of the primary reasons for the proliferation of domestic law arguments on the UCC is that domestic law has an unsaid significance in the legal formulation. International human rights instruments like the CEDAW and the ICCPR and considered soft law instruments compared to hard law. However, the Standing Committee on External Affairs chaired by Mr. P.P. Chaudhary recently presented its report titled "India and International Law" on 10th September 2021. India is a dualist country, as recognised in Article 253 of the Indian Constitution. This means that an Act of Parliament is required to give effect to India's international law obligations. However, the report notes that the Supreme Court of India has been moving more towards a more monist approach, which is characterised by provisions of international law being part of the Indian law, without a



Image credit: Lightspring



complementing Act of Parliament. This approach was noted in *Research Foundation for Science v. Union of India*, wherein the Supreme Court ruled that the precautionary principle, an international environmental law principle, to be part of Indian law without an Act of Parliament.

This provides an excellent opportunity for the progressive development of law when the Legislative or Executive has not been able to enact a provision due to political reasons. Such circumstances provide the Supreme Court with the perfect opportunity to progressively develop the law by giving effect to India's international law obligations under the ICCPR and CEDAW for a UCC and use international law to improve the lives of women in India.

Further, Article 2(2) of the ICCPR explicitly states that if a member state

does not have a law to ensure consistency with one of the ICCPR's provisions, the member state must take the necessary steps to adopt such laws. This speaks volumes regarding the significance of the obligation imposed by the ICCPR. The Director of the Indian Society of International Law, Dr. Manoj Sinha, has gone as far as to say that every Constitutional must be in line with the ICCPR.⁵

IV. Conclusion:

"Differential Treatment" by allowing different personal laws is just a sugar-coated word for discrimination. Such a measure is inconsistent with the CEDAW and the ICCPR. No interpretative issue can be said to exist since clarity on the same has already been provided by the CEDW and the UNHRC. Even if those opposing the

UCC and supporting discrimination decide to brush aside Article 44 of the Indian Constitution, they cannot ignore India's international law obligations.

The personal laws in India affect 1.38 billion individuals. Laws affecting such a large number of people cannot be based on inequality and discrimination. Yet, despite the obligations imposed by the CEDAW and ICCPR, and the recommendations by their monitoring bodies – India still has personal laws which are inconsistent with the principle of equality in marriage laws. The proposal spearheaded by Chief Minister Dhami's government for UCC is the type of progressive measure required to pull India out of the draconian ravines of discrimination.

**Author: Ahan Gadkari,
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The argument for UCC

The Constitution of India is a sacred document and also the supreme law for matters related to the administration of India. In our constitution article 44 of Directive Principles of State Policy (DPSP) clearly says that "The state shall endeavour to provide it's all citizens a uniform civil code (UCC) throughout the territory of India." The objective behind the incorporation of this article was to address the discrimination against vulnerable groups and to harmonize the cultural diversity of India.

Dr Ambedkar also supported UCC in constitutional assembly debates and said that UCC is desirable but for the moment it should remain voluntary. If we talk about the meaning of UCC- 'It refers to a common set of laws governing civil rights of every citizen.' It is based on the premise that there is necessarily no connection between religion and personal laws in a civilized society. UCC does not mean, it will limit the freedom of people to follow the religion, it just means that every person will be treated the same.

The origin of UCC dates back to the 19th century. *The Lax Loci report* of 1840 underlines the importance and necessity of uniformity among all Indian laws related to crimes, contracts and evidence but the report recommended that personal laws should be kept outside. *The Queen's Proclamation 1859* also assured non-interference in religious matters.

Now the most important question is why there is a need for UCC, especially in India. For centuries, India has been home to many religions, sects and ideologies. Cultural and religious diversity and respect for each other's religion have been present in the value system of Indian society. Post-independence there were different laws

governing rights related to personal matters like marriage, divorce, maintenance, adoption and inheritance for different communities. Post Independence, there was made a clear provision for UCC in art 44 in our constitution. However, article 37 of the Constitution itself makes it clear that DPSP "Shall not be enforceable by any Court and these are fundamental in the governance of the country." This very clearly indicates that our constitution itself believes that UCC should be implemented sooner or Later but definitely. The constitution-makers agreed on the concept of UCC. However, it was left for the future generations to decide, in the view of the circumstances. At that time provision of UCC was made in a non-binding section- DPSP. But UCC was not left or rejected by our constitution-makers, they were keen to be adopted it in future.

UCC is not the only provision of DPSP, on which the law will be going to pass. The Parliament has passed many laws on the provisions of other DPSPs given in part IV of our constitution. A few of them are listed here-

- **Land Reforms** (Art 39(c))- Imposition of ceilings on land holdings, Distribution of surplus land among the landless labourers
- **Labour Reforms** (Art 43) -The Minimum Wages Act (1948), Contract Labour Regulation and Abolition Act (1970), Maternity Benefit Act (1961)
- **Education** (Art 45)- 86th Constitutional Amendment, Rights to Education Act 2009,
- **Health** (Art 47)- Pradhan Mantri Gram Swasthya Yojana (PMGSY), National Rural Health Mission (NRHM)
- **Environment** (Art 48A) - Wildlife

(Protection) Act, 1972, Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986

- **Panchayati Raj System** (Art 40): 73rd Constitutional Amendment Act, 1992

So this is not the first time, laws are being made for the fulfilment of requirements given in DPSP, nor the present government is the first one who is willing to pass such a law. In the constitution, there is also no conflict between fundamental rights and DPSP as there are very clear decisions given by the Apex court in *Keshavanand Bharti Case (1993)* and *Minerva Mills case (1980)*. So if any such law is going to be framed, it shall be consistent with the decisions given in these cases.

Now the most important question is why the UCC is the need of the hour. First and the strongest reason behind this is that there are several articles in the constitution which expect this code to be implemented and this will be in coherence with all those articles like Art 15 (No discrimination on grounds of religion). There is also a clear provision for UCC in Art 44.

Supreme Court in various decisions like *Shah Bano Case (1985)*, and *Sarla Mudgal Case(1985)* has indicated that the government should explore the UCC as a means to secure gender justice, equality and the dignity of women. UCC will not only protect the vulnerable section including women and religious minorities but also simplify complex personal laws and that in turn will promote nationalistic fervour through unity. The Shah Bano case, which upheld Muslim women's right to maintenance was considered a step in the direction of implementation of UCC. Although the Rajiv Gandhi government diluted this secular judgement of the



supreme court in 1986.

UCC will also simplify the complex laws around marriages, ceremonies, inheritance, succession, and adoption, making them one for all. Since India is a **secular state** and a secular republic needs a common law for all its citizens rather than differentiated rules based on religious practices. If implemented UCC will prove to be a milestone law in favour of gender justice.

Another reason that favours UCC is that it has long featured in the political and legislative debates ever since before the days of the formulation of the constitution. 21st Law Commission also submitted a consultation paper on 'Reforms in family laws in India'. Recently Supreme Court described Goa (having common family laws) as a shining example where UCC is applicable to all.

It should also be noted that by allowing

personal laws we have constituted an alternative judicial system that still operates on thousands of years old values. A Uniform Civil Code would change that. Articles 25 and 26 of our Constitution guarantee freedom of religion and UCC is neither in opposition to these articles nor to secularism. UCC is also a sign of a more progressive Nation. It shows that the nation has moved away from caste and religious politics. At present our economic growth is very significant all across the world, now our social growth should also be at par. UCC will move society forward and take India toward its goal of becoming a truly developed nation.

It is also a well-versed fact that many provisions of specific personal laws are in violation of human rights, UCC will address that. Codification and unification of personal laws will produce a more coherent legal system; this will

reduce the existing confusion and will enable easiness and more efficient administration of laws by the judiciary.

So It is our duty to realise the goals of DPSP given in our constitution and to support the uniformity of laws. All the sections of our society should develop a progressive and broad-minded outlook to understand the spirit of UCC. The opposition and political and intellectual leaders should also try to evolve a consensus. Every human has a right to live with and to be treated with dignity, in which personal laws have failed so far. Codification of all our personal laws is very much needed and the Modi government is very serious about this matter. If UCC gets implemented, it will help in integrating India more than It has ever been since independence.

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Image credit: Sebastian Duda

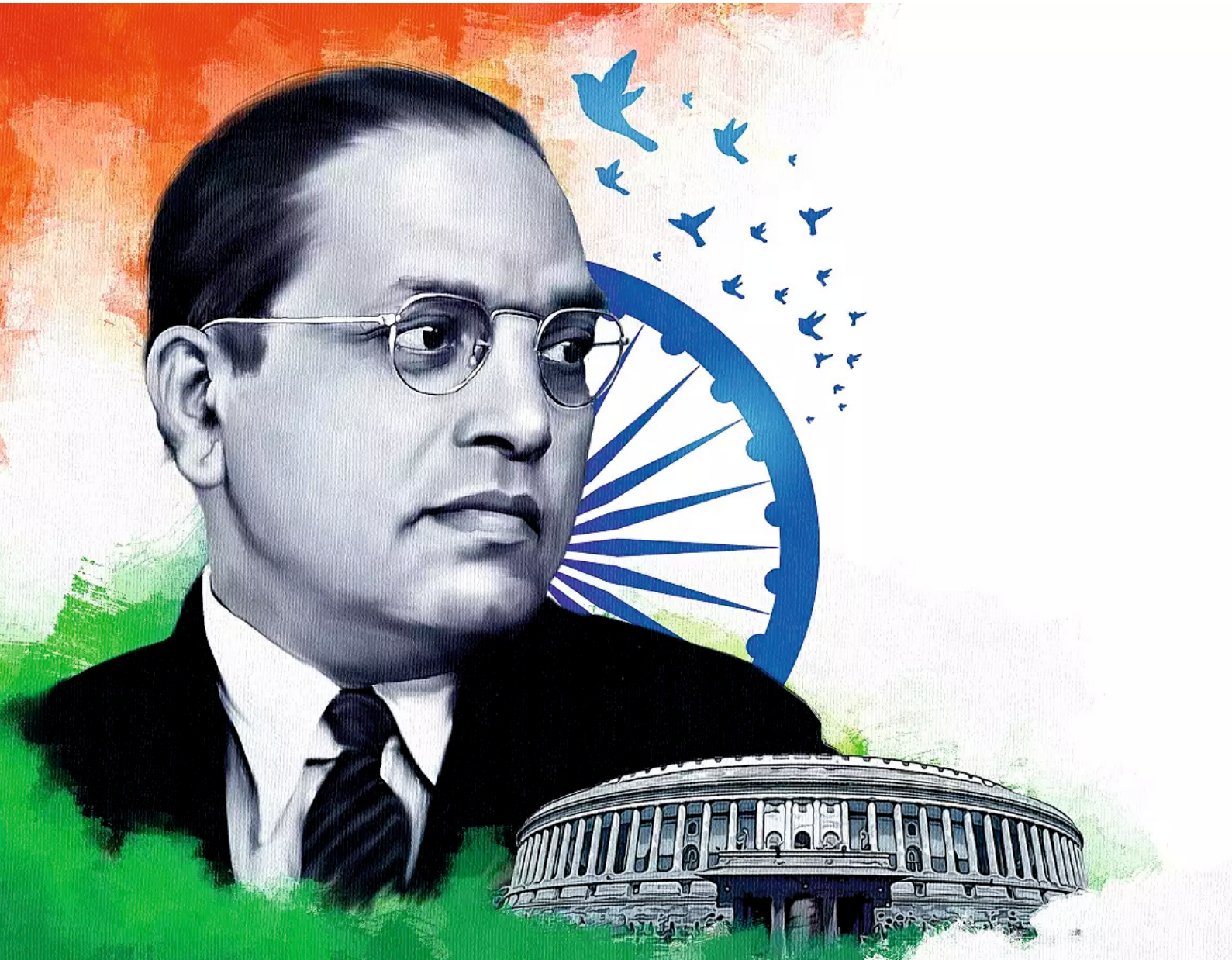


एक देश, एक कानून: अंबेडकर के सपनों का भारत

अभी हाल ही 14 अप्रैल को हमने बाबासाहब की 131वीं जयंती मनाई है। वर्ष 1891 में 14 अप्रैल को जन्में डॉ. भीमराव अंबेडकर को भारत का संविधान निर्माता भी कहा जाता है। 23 नवंबर, 1948 को संविधान सभा में समान नागरिक संहिता पर बहस हुई थी।

इस बहस के दौरान समान नागरिक संहिता का कुछ मुस्लिम सदस्य पुरजोर विरोध कर रहे थे। विरोध करने वालों में मोहम्मद इस्माइल, नजीरुद्दीन अहमद, महबूब आली बेग और हुसैन इमाम इत्यादि थे। विरोध के बाद बाबा साहब जो कहा वह आज भी

उतना ही प्रासंगिक है। उन्होंने कहा कि- रूढ़िवादी समाज में धर्म भले ही जीवन के हर पहलू को संचालित करता हो लेकिन आधुनिक लोकतन्त्र में धार्मिक क्षेत्र अधिकार को घटाए बगैर असमानता और भेदभाव को दूर नहीं किया जा सकता है। यही कारण था



कि अंबेडकर ने संविधान में अनुच्छेद 44 का प्रावधान किया था जो यह निर्देश देता है कि सरकार को सभी धर्मों के लिए एक समान कानून बनाने के प्रयास करने चाहिए।

1951 में जब जवाहर लाल नेहरू की सरकार ने हिन्दू कोड बिल वापस लिया तो पहले कानून मंत्री भीमराव अंबेडकर ने 15 सितंबर, 1951 को मंत्री पद से अपना स्तिफा दे दिया था। बाद में कांग्रेस पार्टी से भी उन्होंने स्तिफा दे दिया। इस हिन्दू कोड बिल में फेमिली लॉ (विवाह, संपत्ति बटवारे और तलाक का अधिकार) के प्रावधानों का उल्लेख किया गया था। समान नागरिक संहिता में पूरा विवाद भी सिर्फ फेमिली लॉ का ही है। अंबेडकर का तर्क था कि यदि देश धर्मनिरपेक्ष है तो सिर्फ हिंदुओं के लिए ऐसा कानून क्यों, मुसलमानों पर भी यह कानून समान रूप से लागू किया जाना चाहिए। यह व्यवहार में भी हमें जम्मू-कश्मीर में देखने को मिलता है कि एक समान कानून से शासित होने के बावजूद इस पर कोई विवाद नहीं था। जम्मू और कश्मीर के मुस्लिम शरीयत कानून के हटने के बाद से एक प्रथागत कानून द्वारा शासित थे जो वास्तव में मुस्लिम पर्सनल ला से भिन्न था और हिन्दू कानून के करीब था। अंबेडकर सदैव एक देश, एक कानून के पक्ष में रहे। देश के उच्च न्यायालयों और उच्चतम न्यायालय ने भी समय-समय पर समान नागरिक संहिता के लिए अनुशंसा की है।

2019 में गोवा के एक व्यक्ति की संपत्ति के मामले में सुनवाई करते हुए भी उच्चतम न्यायालय ने संविधान निर्माताओं ने तो समान नागरिक संहिता का स्वप्न देखा था लेकिन बाद कि सरकारों ने इसकी कोई चिंता नहीं की। भारतीय जन संघ के संस्थापक श्यामा प्रसाद मुखर्जी ने सदन में चर्चा के दौरान कहा था कि सरकार को हिन्दू कोड बिल कि बजाय समान नागरिक संहिता ले आना चाहिए। संविधान सभा की बहस के दौरान समान नागरिक संहिता के समर्थन में अकेले भीमराव अंबेडकर ही नहीं थे अपितु कन्हैयालाल माणिकलाल मुंशी के साथ-साथ अय्यर साहब भी इसके समर्थन में थे। संविधान सभा की बहस में उन्होंने कहा कि भारत में अब भी कम से कम ऐसे 11 कानून हैं जो समान रूप से पूरे भारत में लागू होते हैं। यदि कोई आपराधिक मामला होता है तो किसी भी नागरिक को चाहे वह किस भी धर्म का हो, क्रिमिनल प्रोसीजर कोड के तहत ही सजा दी जाती है तो समान नागरिक संहिता से क्या समस्या होनी चाहिए। दूसरा तर्क यह भी प्रस्तुत किया था कि एक मजबूत राष्ट्र के लिए यह आवश्यक है भिन्न-भिन्न लोगो के लिए अलग-अलग पर्सनल लॉ की बजाय एक समान कानून हों।

हमें यह समझने की आवश्यकता है कि समान नागरिक संहिता का तात्पर्य यह कतई नहीं है कि इससे भारत की सांस्कृतिक वैविध्य को समाप्त कर लागू कर दिया

जाएगा। भारतीय जनता पार्टी ने अपने 2019 के संकल्प पत्र में जो तीन बड़े वादे किए थे, उनमें राम मंदिर का मुद्दा और धारा 370 के साथ ही समान नागरिक संहिता की भी बात की गई है लेकिन उन्होंने स्पष्ट उल्लेख किया है कि सांस्कृतिक वैविध्य के साथ समान नागरिक संहिता को लागू करेंगे। समान नागरिक संहिता के बाद भी हमें अपने रीति-रिवाज को मानने की स्वतन्त्रता तो होगी ही। अर्थात् समान नागरिक संहिता का उद्देश्य मात्र इतना है कि धर्म के आधार पर समाज में जो असमानता उत्पन्न होती है उसको समाप्त किया जाए न कि सांस्कृतिक विविधता को। यह समानता को ही समाप्त करने की दिशा में एक महत्वपूर्ण कदम 2019 में पारित मुस्लिम वुमेन (प्रीवेंशन ऑफ राइट्स ऑन मैरिज) एक्ट, 2019 को माना जा सकता है। इस कानून के आने के बाद से ही ट्रिपल तलाक के मामलों में कमी आई है। 1986 में जब शाह बानो केस में उच्चतम न्यायालय के फैसले को तत्कालीन राजीव गांधी की कांग्रेस सरकार ने पलट दिया था। 1986 से 2019 के बीच अकेले मध्य प्रदेश में 22801 मामले सामने आए वही 2019 से 2020 सिर्फ 32 मामले सामने आए। पश्चिम बंगाल में 1986 से 2019 के बीच 51800 मामले सामने आए अर्थात् सालाना लगभग 1500 से ज्यादा मामले आते थे लेकिन ट्रिपल तलाक पर कानून आने के बाद 2019 से 2020 के मध्य सिर्फ 200 मामले आए। इसके साथ ट्रिपल तलाक कानून के आने के बाद तेलंगाना, आंध्र प्रदेश, केरल और असम सहित अनेक राज्यों में ट्रिपल तलाक के मामलों में कमी आई है। समान नागरिक संहिता के लागू होने से समाज में तीन तलाक और बहू विवाह इत्यादि जैसी सामाजिक कुरीतियों से भी निजात मिलेगी और धर्म के आधार पर सामाजिक असमानता भी दूर की जा सकेगी।

लेखक: राजीव प्रताप सिंह, पीएचडी शोधार्थी
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Uniform Civil Code: Need of the Hour

We mostly talk about Fundamental rights because they are enforceable in nature. Enforceability means one can go to the Supreme courts and High courts if anyone violates their Fundamental rights. But the provisions of the Constitution which always remain under the eclipse are the Directive principle of State Policy because of their lack of enforceability. These principles are the guidelines for the government which should be taken into consideration while making a new policy or any law. Among the Directive Principles, Art. 44 of the Constitution of India directing the State to secure for citizens a Uniform Civil Code throughout the territory of India has occupied a pivotal place of conflict in respect of political ideologies and judicial activism. The debates on Uniform Civil Code started with the framing of the Constitution and are still on till date. The paramount objective of unity and integrity of India as resolved by the People of India in the Preamble and agreed to be obeyed as Fundamental Duty under Art. 51A(c) of the Constitution of India, though not enforceable like directives, could be achieved only when, from out of various measures, Article 44 is transformed into an enforceable Uniform Civil Code.

The discussion of a uniform civil code, is divided mainly into three categories- Politically, Socially, and Religiously. Politically, the nation is divided between parties where one section focuses on the implementation of the Uniform Civil Code and other parties which are against the implementation of the Uniform Civil Code. Socially, between the intellectual class of the country, who analyze logically the pros and cons of the

Uniform Civil Code, and the ignorant who have no opinion of their own. And Religiously, between Hindus and Muslims by creating a dangerous rupture between them.

To know more about the Uniform civil code we should see the Constituent Assembly Debate. While explaining the necessity of Art. 44 (Art. 35 in a Draft Constitution) in Part IV of the Constitution of India, Shri K.M Munshi addressed the Constituent Assembly that: “this particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in Article 19; and secondly, it is tyrannous to the minority.

As regards Article 19 of the Draft Constitution (now Article 25 of the Constitution) the House accepted it and made it quite clear that – “Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting any economical, financial, political or other secular activity which may be associated with religious practices (b) for social welfare and reforms”. Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in the future would have

no right to enact a Civil Code. The only restriction to such a right would be the then Article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt can be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries, the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

We are at that stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practice in the past has been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasized by this article.

Further, Shri Alladi Krishnaswami Ayyar² addressed the House that: “The article actually aims at amity. It does not destroy amity. The idea is that differences contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a



UNIFORM CIVIL CODE



common measure of agreement regarding these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems as well. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Therefore, when there is an impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the

community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without 2 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a Uniform Civil Code.” (Article 35 of the Draft constitution, now it is Article 44 of the Constitution).

While summing up the discussion, Dr. B. R. Ambedkar³ opined that: “We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law to Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are Negotiable Instruments Act: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little

corner that we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to be somewhat a whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question of whether we could do it. As I say, we have already done it. It may be said that they have read rather too much into Article 35, which merely proposes that the State shall endeavor to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament

ARTICLE

may feel the ground by some such method. “

Judicial Anxiety

With the days of judicial activism, the judiciary also now seems to be a little more vociferous on the demand. The need for enactment of the Uniform Civil Code first arose before the Supreme Court of India in the case of Mohammad Ahmed Khan v. Shah Bano Begam. In this case, a penurious Muslim woman claimed maintenance from her husband under Section 125 of the Code of Criminal Procedure, 1973 after she was given triple talaq from him.

The Supreme Court held that the Muslim woman has a right to get maintenance from her husband under Section 125 beyond the Iddat period. The Court also regretted that Article 44 of the Constitution has remained a “dead letter” as there is “no evidence of any official activity for framing a common civil code for the country”. Justice Y.V. Chandrachud, the then Chief Justice of India, emphasized: “A common civil code will help the cause of national integration by removing disparate loyalties to the law which have conflicting ideologies”

After this decision, nationwide discussions, meetings, and agitations were held. The then Rajiv Gandhi-led Government overturned the Shah Bano case by bringing in the Muslim Women

(Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure, 1973. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the Uniform Civil Code, 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.

The Uniform Civil Code touches on the personal life of a person but does not touch the religion. The same view is reflected by the Supreme Court in the case of Sara Mudgal v. Union of India⁵. The questions for consideration in the above-mentioned case were whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnize a second marriage. Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be Hindu. Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code.

Answering the posed questions the Court held that the second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in

terms of the provisions of Section 494 of Indian Penal Code, 1860, and the apostate-husband would be guilty of the offence under Section 494 of Indian Penal Code, 1860. While deciding this case Justice Kuldeep Singh reiterated that “Art. 44 is based on the concept that there is no necessary relation between religion and personal law in a civilized society. Art. 25 guarantees religious freedom whereas Art. 44 seeks to divest religion from social relations and personal law. Marriage, succession, and like matters of a secular character cannot be brought within the guarantee enshrined in Arts. 25, 26, and 27. In this view of the matter, no community can oppose the introduction of a uniform civil code for all the citizens in the territory of India. We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and “endeavor to secure for the citizens a uniform civil code throughout the territory of India”. But the Supreme Court in Lily Thomas v. Union of India clarified that, any direction for the enforcement of Art. 44 of the Constitution of India could not have been issued by only one of the Judges in Sarla Mudgal's case (supra). The Supreme Court's again reminds the government of its Constitutional obligations to enact a Uniform civil code came in July 2003 in the case of John



Vallamattom v. Union of India. Justice V. N. Khare⁷, the then Chief Justice of India reiterated the need for Uniform Civil Code and observed that “Art. 44 provides that the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice, and propagation of religion. The aforesaid two provisions viz. Arts. 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be brought within the guarantee enshrined under Arts. 25 and 26 of the Constitution. Any legislation which brings succession and

the like matters of secular character within the ambit of Arts. 25 and 26 are suspect legislation. It is a matter of regret that Art. 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.”

Opinion

Though, Art. 37 of the Constitution of India mandates that the provisions contained in this part (Part-IV) shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws, the Parliament has failed to discharge this Constitutional obligation in translating the principle of Art. 44 into law by taking effective steps in this regard. The

subject matters like inheritance, succession, Wills, Gifts, adoptions, and maintenance are no longer the subjects having a close affinity with religion, rather, these subjects are purely and squarely falling within the domain of Civil Laws. Parliament must, in its utmost wisdom, discriminate between issues touching Constitutional goals and issues pertaining to a political end. The paramount objective of unity and integrity of India as resolved by the People of India in the Preamble and agreed to be obeyed as Fundamental Duty under Art. 51A(c) of the Constitution of India, though not enforceable like directives, could be achieved only when, from out of various measures, the directive of Art. 44 is transformed into an enforceable Uniform Civil Code.

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Image credit: WESTOCK



Why UCC should be the law of the land in India?

Uttarakhand CM Pushkar Singh Dhami has announced that a committee of experts will be constituted to implement the Uniform Civil Code in the state, making Uttarakhand the first state to do so.

The announcement has once again stirred up the debate whether this one nation is to be governed by one law or a hybrid of personal laws drawn from the religious scriptures of the respective communities. The answer, despite being logically evident, surprisingly eludes even the best of minds, even the ones apparently committed to the ideas of “secularism” and “equality”.

The partition of India was an unprecedented tragedy that left millions massacred, and many more displaced and desolated. The reason behind this ordeal was that the Jinnah-led Muslim League demanded a separate nation-state for Muslims as they feared that an independent India would be dominated by Hindus. The piece of land amputated from India wasted no time in implementing the Islamic law, trampling upon the rights of religious minorities and codifying that inequality in the law of the land.

What transpired in independent India “dominated” by Hindus is a different tale altogether. India decided to not have a state religion, and since both Hindus and Muslims living in India were governed by personal laws, the next logical step would have been to mould the personal laws into a standardized code. A paranoid mind might have anticipated that a Hindu majority in India would only intervene in the religious freedom of the Muslim minority by codifying the Islamic law and Hindus would still be governed by

their personal laws. What happened was the exact opposite.

The Hindu personal law was abolished in the favour of the Hindu Bill while the Muslim Personal Law remained untouched by this prospect of modernity. Pt. Jawaharlal Nehru believed that women's empowerment should be the foundation stone of any civil society and hence, wanted to implement the Uniform Civil Code in the country. Dr. B.R. Ambedkar, a vehement advocate of the Uniform Civil Code, saw it as an opportunity to reform Hindu society as well as to ensure dignity for Muslim women who have little protection under Sharia Law. When Dr. B.R. Ambedkar proposed the Uniform Civil Code in the Constituent Assembly, he had to face staunch opposition from the Muslim leadership, and hence, India stopped midway on her path to modernity and progress.

The majority had, with all its resistance, agreed to mend ways with the passage of time, while the minority, which had just carved out a nation in the name of religion, arm-twisted the whole establishment into granting privileges in the name of religion once again. The Hindu Code asserted that all Hindus, Buddhists, Sikhs, and Jains would be governed under a uniform law while Muslims had practically secured themselves little theocracies on both sides of the border.

The desire of the founding fathers of the Indian republic was enshrined in Article 44 of the Directive Principles of the Constitution, which asserts, “The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India”; in hopes that Muslim community would progress at its own

pace and soon enough, the Uniform Civil Code would be adopted by the nation. Soon enough, but to the contrary, the Indian judiciary found itself at crossroads with the Muslim leadership at the advent of the Shah Bano case, and once again, the establishment caved into the theocratic demands of the minority community.

The phrase “equal before the law” does not reach its logical conclusion till each individual irrespective of gender, race, and religion is governed by one set of laws. It is evident that such a proposition would contribute to national integration and reduce everyday mental gymnastics around special courts, rights, and privileges for specific communities.

It is often reiterated that implementing UCC would be in contradiction with Article 25 of the Indian Constitution which secures the minorities the right to “freely profess, practice and propagate religion”. It is rather interesting that these self-proclaimed devotees of the Indian Constitution fail to quote the complete Article which states that “**all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health.**”

Practices that are at loggerheads with the public order and modern morality need to be done away with; if the barrier to inter-caste marriages could be abolished by the Hindu Bill, there is no reason that a modern republic in the 21st century should allow a practice like Nikah Halala which is against every definition of public order, morality and health. The originality of any religion lies in its spiritual quest that helps a person answer big questions in life, its methods of





UNIFORM CIVIL CODE

connecting with a higher power, and its festivals and rituals that promote social cohesion. Claiming that the “originality” of a religion lies in regressive practices that outrage a woman's modesty or disturb public order, morality and health is an insult to that religion and should be deemed offensive by its followers.

What was actually deemed offensive by these devotees of the Indian constitution was the implementation of the Citizenship Amendment Act because “a secular country cannot make laws based on religion”. The same “secular” country

can definitely have the Ministry of Minority Affairs, National Commission for Minorities, minority welfare schemes, minority character of educational institutions, and minority certificates but it cannot provide asylum to those in distress. These anomalies occur because, at the time of partition, India neither adopted a state religion nor it could adopt a uniform law for every citizen, hence, monkey-balancing between appeasing different communities became an everyday affair, and privileges were mistaken as rights.

The Indian Civilization has been a repository of wisdom and torchbearer for humanity for thousands of years, seeing it reduced to this confusion and uncertainty is rather awkward and disappointing. At the dawn of the Indian republic, India missed a small step but it will be a giant leap for mankind to realize the phrase “equal before the law” both in letter and in spirit.

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The Uniform Civil Code

Uniform Civil Code, a persistent century-long issue that has been the epicenter of political ideology and debate, finally got to see a silver lining of resolute intent with the Bharatiya Janata Party's resounding victory in 2014. The absolute majority of the incumbent leadership guaranteed UCC as a part of their Election Manifesto during the 2019 election besides the much-discussed agendas of banning Article 370 in Jammu & Kashmir and the Triple Talaq Bill. Resonating with Prime Minister Narendra Modi's vision of "Sab Ka Saath, Sab Ka Vikaas", UCC legislation in Parliament shall configure the backbone framework for formulating and implementing the "One Nation, One Law" theory to practice. Over the last 7 decades since India's Independence, BJP has been the only political party to envision and push for implementing the UCC under Article 44 of the Constitution if voted to power, thereby promoting national integration, gender justice, equality, and women empowerment.

Origin and Historical Perspective of UCC

The origins of the Uniform Civil Code dates back to the colonial era when the British Government submitted a report highlighting the need and importance of standardizing uniformity through the codification of Indian laws related to crimes, evidence, and contracts that will have legislations beyond personal laws of specific communities.

Colonial Era (Pre-independence):

- The Lex Loci Report submitted in 1840 stressed the importance and need for uniform codifications of Indian laws. However, it specifically recommended that personal laws should be kept outside the legislation of such codification.

What is Uniform Civil Code?

The Uniform Civil Code (UCC) implies a set of secular civic laws which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, and adoption. The code resonates with "One Nation, One Law" ideals and is explicitly mentioned in Part IV, under Article 44 of the Constitution of India, which lays down that "The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

What is Article 44 and why is it Important?

Article 44 corresponds with Directive Principles of State Policy (DPSP) stating that the State shall endeavor to provide for its citizens a uniform civil code (UCC) throughout the territory of India. The intent of Article 44 of the DPSP in the Constitution of India was to address the concerns relative to discrimination against vulnerable groups and how diverse cultural communities could be harmonized across the length and breadth of the greater community of India. While drafting the Constitution, Dr. B.R. Ambedkar had expressed how desirable was UCC but for then, it should remain voluntary. Hence Article 35 of the Draft Constitution was added as a part of the DPSP in Part 4 as Article 44 which gives Parliament the exclusive power to make laws relating to Articles 16 (3), 32 (3), 33, and 34.

- The Queen's 1859 Proclamation guaranteed total and absolute non-interference in religious matters. Post-Colonial Era (1947 – 1985):
- During the drafting of the Constitution Dr. Ambedkar and other prominent leaders like Jawaharlal Nehru vouched for a Uniform Civil Code. However, they had to include UCC in the DPSP primarily fearing rigorous opposition from religious fundamentalists and lack of awareness amongst the masses at that time.

What are Personal Laws and their reforms?

Personal Laws are rules/rights that apply to communities based on their specific religion, caste, faith, and belief, implemented after due consideration of customs and religious texts. Even though the British were responsible for introducing the concept of Codified

laws, the Reformation Period in India saw many progressive attempts by eminent activists like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and alike to eradicate malpractices within the Hindu community that involved Child Marriage, Sati, Caste, etc. Post-independence, overturning the Queen's proclamation of 1859, Dr. Ambedkar undertook the responsibility of drafting the fundamental reforms that would guarantee social progress, gender equality, and modernization. Nehru chose to proceed by instituting the Hindu Code Bills first, as he believed it was mandatory to unify 80% of the Indian population first before any action could be taken towards the other communities as this would be a symbolic beginning to establish the Indian national identity.

The Hindu code bill –

The draft of the 1941 B.N. Rau



Uniform Civil code

Article 44



Committee report was submitted to a select committee with Dr. Ambedkar as Chairman that came up for discussion in 1951 after the adoption of the Constitution. The revised bill drafted by Dr. B R Ambedkar aimed to reform Hindu laws, which legalized divorce, opposed polygamy and gave rights of inheritance to daughters. As discussions, oppositions and debates continued, the Hindu Code Bill lapsed and was resubmitted in 1952. Several amendments and revisions later, the Hindu Code Bills were diluted into four separate bills and were finally adopted in 1956 as the Hindu Succession Act.

- 1 The Hindu Succession Act
- 2 The Hindu Marriage Act
- 3 The Hindu Minority and Guardianship Act
- 4 The Hindu Adoptions and Maintenance

What is the Special Marriage Act?

It was enacted in 1954 which provided for civil marriages outside of any religious personal law. This Act defines the provisions for civil marriage (“registered marriage”) for people of India and Indian nationals in foreign

countries, irrespective of religion or faith followed by either party.

Judicial interventions:

(a) Shah Bano case (1985):

A 73-year-old woman called Shah Bano was divorced by her husband using triple talaq (saying “I divorce thee” three times) and was denied maintenance. She approached the courts and the District Court and the High Court ruled in her favor but her husband appealed to the Supreme Court citing Islamic Law. The Supreme Court ruled in her favor in 1985 under the “maintenance of wives, children and parents” provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

(b) Daniel Latifi Case:

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14& 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonized it with

section 125 of CrPC and held that the amount received by a wife during the iddat period should be large enough to maintain her during iddat as well as provide for her future.

(c) Sarla Mudgal Case:

In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnize a second marriage. The court held that the Hindu marriage solemnized under 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.

(d) John Vallamattom Case:

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable to non-Hindus in India. Mr. Vallamattom contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by



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will. The bench struck down the section as unconstitutional.

The word 'Secularism' was inserted in the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act, 1976, which changed the description of India from “sovereign democratic republic” to a “sovereign socialist secular democratic republic” as well as changing “unity of the nation” to “unity and integrity of the nation”.

Goa Civil Code

Goa is presently the only state in India to have a Uniform Civil Code in the form of “Common Family Law”. It is from The Portuguese Civil Code that was introduced in the 19th century and is still in force after the liberation.

- Allows equal division of income and property between husband and wife and also between children (regardless of gender).
- Every birth, marriage, and death have to be compulsorily registered. For divorce, there are several provisions.
- Muslim marriages registered in Goa cannot practice polygamy or divorce through triple talaq.
- During the marriage, all the property and wealth owned or acquired by each spouse is commonly held.
- Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children and must be shared equally among the children.

Recent Developments

Triple Talaq Ban: Muslim family affairs in India were governed by 'Shariat' (Muslim Personal Law Protection Act, 1937). Under Sharia,

Triple Talaq is an instant divorce form where a practicing Muslim man could legally separate from his wife by simply pronouncing “talaq” (divorce) three times. With the long-term vision, the BJP Government introduced The Muslim Women (Protection of Rights on Marriage) Bill to Parliament on, and after several debates and political opposition, the Bill was finally passed by the Lok Sabha on 28 December 2017. In a major confidence booster for the Narendra Modi-led Government, the Rajya Sabha (Upper House) too approved and passed the Bill on 30 July 2019 after heavy discussions and debate, and finally became a LAW on 31st July 2019. The motion of the Bill was part of the BJP's election manifesto in 2019 and it followed after a landmark Supreme Court of India judgement. The case was called Shayara Bano vs Union of India and in a 397-page ruling, the validity of Triple Talaq was made unconstitutional, with up to 3 years of jail term for perpetrators and also allowing the provision for aggrieved women to demand maintenance for her dependent children.

What will the Uniform Civil Code guarantee? - The Way Forward towards a Conclusion

The task of devising a common set of laws for governing all communities can be a very challenging and tedious job considering the multitude of vested interests and sentiments that needs to be accounted for. While the discussion for implementation of the UCC has been a matter of debate for over seven decades post-independence, the directives in the content have been deliberately kept under wraps and prevented from being spelled out to the beneficiaries leading to misinformation. It is very clear, that there has been a serious lack of political will to extend the circumference of legislation beyond the Hindu Code Bills, primarily due to the complexities and sensitivities related to minority faiths

and vote bank politics. Opponents of UCC argue that personal laws are derived from religious beliefs. They maintain that it is prudent not to disturb them, as this runs the risk of engendering a great deal of animosity and tension between various religious communities. However, since the BJP with its strong public mandate and nationalistic outlook, has been promoting the desirability of UCC and how it would strengthen and consolidate the Indian nationhood. The UCC also was included in its election manifesto for 2019, and the Government has made significant progress in taking the giant leap towards codification and uniformity of personal laws by first fulfilling another manifesto commitment of abolishing Triple Talaq. The incumbent BJP government that enjoys the public mandate and has an absolute majority in both houses of the Parliament is aiming to propagate a progressive, modernized and broadminded approach towards building a strong Nation-State model that would hence become a backbone for ensuring justice, integrity, and uniformity for all citizens of India irrespective of caste, creed, faith, gender, and class. While the opposition continues to binge on vote bank politics and oppose social development, the BJP has instead moved ahead of such emotive issues for gaining political advantage because this is not just an issue of social justice or minority protection but a mandate for establishing national unity and integrity where every human earns the dignity that the personal laws have failed to deliver. The introduction, implementation, and execution of the Uniform Civil Code resonate with the Bharatiya Janata Party's clarion call for “Sab Ka Saath, Sab Ka Vikaas”, thereby facilitating a Uniform National Identity and Integrity.

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Need for Uniform Civil Code

Article 44 of the constitution of India has enumerated a direction for the state to enact a Uniform Civil Code which says that the 'state shall endeavor to secure for its citizens a Uniform Civil Code throughout the territory of India.' It is intended to formulate and implement personal laws of citizens which apply to all citizens equally regardless of their religion, sex, gender, etc. The framers of the constitution who fought a long and tough battle for the freedom of the country had dreamed of a uniform equal society where no one is differentiated on any ground. Both Parliament and state assemblies have the right to legislate on personal legislation under the Constitution. The inclusion of personal law in the Concurrent List appears to be

motivated by the desire to preserve legal diversity (entry No. 5). Then the question is why it has not been enacted even after more than 70 years of adoption of the constitution.

The UCC debate is a contentious issue and one of the reasons for non-supporting parties is an erroneous belief that the Uniform Civil Code comes in conflict with the fundamental right, the right to freedom of religion and that is why the Uniform Civil Code is made less important. But let me make it clear that, there is nothing to do with the religious plurality and disparities in personal laws.

The truth is the law varies from one state to the next. There is no single rule that governs all Hindus in the country, just as

there is no single law that governs all Muslims or Christians. Likewise, British legal traditions, Portuguese and French legal traditions, are still in use in various areas. Local Hindu law statutes in Jammu and Kashmir differed from national enactments till August 5, 2019. A few years ago, the Shariat Act of 1937 was extended to J&K, but it has since been repealed. As a result, Muslims in Kashmir was ruled by a customary law that differed from Muslim Personal Law in the rest of the country in many areas and was, in reality, closer to Hindu law. Even when it comes to Muslim marriage registration, laws vary from place to place. It is mandatory in J&K (under the 1981 Act), but optional in West Bengal, Bihar (under the 1876 Act), Assam (1935 Act), and Odisha (under the 1935



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Act) (1949 Act). There are about 200 tribes in the Northeast, each with its own set of customary laws. In Nagaland, the Constitution protects local customs. Meghalaya and Mizoram also have similar safeguards. Despite its codification, even revised Hindu law protects customary behaviors.

The framers of the Constitution used the term “uniform” rather than “common,” since “common” denotes “one and the same in all circumstances,” whereas “uniform” indicates “the same in similar circumstances.” Different people may have different laws, but within a group, the law should be consistent. Even under Article 14's right to equality, such a classification is permitted.

The Uniform Civil Code has been opposed by most of the Muslim representatives and wanted the insertion of a non-obstante clause – “Provided that nothing in this article shall affect the personal law of the citizen.”

The Uniform Civil Code is non-justiciable that is it cannot be enforced by Supreme Court, but In many cases, courts have held that it is the duty of the legislature to enforce the provisions enumerated in part IV of the constitution.

The Supreme Court has mocked the political class's inaction on UCC for decades. The governments may have simply ridden on the hopes of the Constitution's founders articulated in Article 44.

“A unified civil code will serve the cause of national unification by eradicating divergent allegiance to the law that have competing philosophies,” the Supreme Court said in the Shah Bano case in 1985. “Where more than 80% of citizens have already been brought under codified personal law, there is no basis whatsoever to maintain in abeyance, any longer, the introduction of universal civil code for all citizens in India,” the Supreme Court declared in

the Sarla Mudgal case in 1995.

In the case of John Vallamattom (2003), the Supreme Court emphasized the importance of accomplishing the Constitution's aim of Article 44. The Nehruvian argument, however, persists: the Muslim community is unprepared. The BJP, in 1998, campaigned on three platforms: repeal of Article 370, construction of the Ram Temple on the disputed site in Ayodhya, and implementation of the Uniform Civil Code. In August 2019, the government revoked J&K's special status. The Supreme Court granted the construction of the Ram Temple on the Ayodhya site in November 2019. This put the last of the BJP's quarter-century-old promises, UCC, in the crosshairs of politicians. Goa is frequently identified as a state with UCC. However, the Portuguese Family and Succession Laws continue to control Hindus in Goa. They are not covered by the modified Hindu Law of 1955-56, and the unreformed Shastric Hindu law on marriage, divorce, adoption, and joint family remains in effect. Goa's Muslims are controlled by Portuguese law as well as Shastric Hindu law, but not by Muslim Personal Law, as the Shariat Act of 1937 has yet to be applied to the state. Even the Special Marriage Act, a progressive civil code, has yet to be implemented there. While the Uttarakhand Chief Minister supports a UCC to promote equality, Hindu law reforms have not totally eliminated gender discrimination. The Enactment of the Uniform Civil Code will ultimately result in a uniform and equal society where there is no discrimination on basis of the religion, gender, region, etc. BJP government has always supported the enactment of the Uniform Civil Code as it has always worked for the growth and development of India according to the provisions enshrined in the constitution of India.



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भारतीय मुस्लिम समान नागरिक संहिता को बुरा नहीं मानते, केवल अशराफ को दिक्कत है

भारत की सभी राजनैतिक पार्टियों और सरकार को यह बात साफ साफ समझ लेनी चाहिए कि भारत में मुसलमान का मतलब देशज पसमांदा होता है, अशराफ नहीं, जब तक वो इस गलतफहमी में रहेंगे तब तक वो अशराफ का भला करके इस मुगालते में रहेंगे कि वो पसमांदा का भला कर रहे हैं।

उत्तराखंड में नई सरकार के गठन के बाद मंत्रिमंडल की हुई पहली बैठक में राज्य में समान नागरिक संहिता (Uniform Civil Code) को लागू करने के प्रस्ताव को पारित करते हुए पैनल गठन को मंजूरी दे दी। इसके साथ ही न सिर्फ उत्तराखंड राज्य में बल्कि पूरे देश में एक बार फिर यूसीसी बहस के केंद्र में है। अभी कुछ ही दिन पहले दिल्ली उच्च न्यायालय में यूसीसी (सामान नागरिक संहिता) को लेकर दायर एक याचिका के जवाब में पेश हलफनामे में केन्द्र सरकार ने कहा कि विभिन्न धर्म संप्रदाय के लोगो का संपत्ति और विवाह संबंधी अलग-अलग कानूनों (पर्सनल लॉ) का पालन करना देश की एकता का अपमान है। केन्द्र ने आगे कहा कि समान नागरिक संहिता भारत को एकीकृत करने का काम करेगी। सरकार विधि आयोग की रिपोर्ट मिलने के बाद संहिता बनाने के मामले में हितधारकों से विचार-विमर्श करके इसकी पड़ताल करेगी। सरकार के मुताबिक यह मामला अहम और संवेदनशील है। लिहाजा इसके लिए गहन अध्ययन करने की दरकार है। (अमर उजाला 9 जनवरी 2022)

ऐसा नहीं है कि यूसीसी से संबंधित यह कोई पहली और नई बहस है समय समय पर समान नागरिक संहिता को लेकर राष्ट्रव्यापी

बहस छिड़ती रही है।

संविधान निर्माण के समय भी इस पर काफी बहस हुई थी, जिसके उपरान्त भारतीय संविधान के अनुच्छेद 44 (डायरेक्टिव प्रिंसिपल) के तहत राज्य को यह अधिकार प्रदान किया गया कि वह सभी नागरिकों के लिए समान नागरिक संहिता बनाने का प्रयास करें। समय समय पर उच्च न्यायालय और सर्वोच्च न्यायालय द्वारा समान नागरिक संहिता की आवश्यकता पर बल देते हुए सरकार से इसके लिए आग्रह किया जाता रहा है किन्तु सरकार की ओर से अब तक इस मामले में कोई ठोस कदम नहीं उठाया गया है।

जब कभी भी सरकार या समाज में इसकी बहस शुरू होती है मुस्लिम समाज का नेतृत्व करने वाले उच्च अशराफ वर्ग की ओर से इसे मुसलमानो के धार्मिक मामले में हस्तक्षेप और इस्लाम के विरुद्ध बताकर, इस पूरे मामले को सांप्रदायिक रंग देने का प्रयास किया जाता रहा है और फिर ऐसा प्रतीत होने लगता है कि यूसीसी लागू होने से मुसलमानों के साथ अन्याय होगा।

समान नागरिक संहिता के खिलाफ गलत प्रचार

पसमांदा एक्टिविस्ट एवं महिला मौलाना

कहकशां वकार कहती हैं कि ऐसा बहुत सा दुष्प्रचार भी किया जाता रहा है कि यूसीसी लागू होने से मुसलमान अपने मुर्दे को दफन नहीं कर पाएंगे उन्हें जलाना पड़ेगा, शादी विवाह में हिन्दू रस्म रिवाज मानना पड़ेगा, टोपी नहीं पहन पाएंगे, उनका ईमान यकीन बर्बाद हो जायेगा आदि आदि। जबकि देखा जाए तो समान नागरिक संहिता केवल शादी विवाह, संबंध विच्छेद, भरण पोषण, विरासत और उत्तराधिकार आदि जैसे मामले में ही देश के सभी नागरिकों के लिए समानता का प्रावधान की बात करता है जो न सिर्फ मुसलमानो से बल्कि इस देश में बसने वाले हिन्दू समाज (हिन्दू, सिख, बौद्ध, जैन, लिंगायत) अन्य अल्पसंख्यक और बहुत से आदिवासी समाज से भी संबंधित है। यहां यह गौरतलब है जब पूरे भारतीयों पर समान रूप से लागू होने वाले क्रिमिनल लॉ से किसी मुसलमान के ईमान यकीन पर आंच नहीं आता है तो शादी विवाह, संबंध विच्छेद, भरण पोषण, विरासत और उत्तराधिकार आदि जैसे मामले में अगर एक समान कानून बनता है तब कैसे किसी का इस्लाम खतरे में आ जायेगा?

शरिया ईश्वरीय नहीं, इसमें संशोधन की गुंजाइश

एक और तर्क दिया जाता है कि शरीयत (शरिया लॉ) में सुधार ही गुंजाइश नहीं है और





इसका अक्षरशः पालन अनिवार्य है और मुसलमानों के लिए उनका पर्सनल लॉ शरिया लॉ पर आधारित होना चाहिए। यहां सवाल यह उठता है कि क्या शरिया दैवीय है? इस्लामी शरिया कानून इस्लामी विद्वानों द्वारा कुरआन और मुहम्मद (स०) के कथनों एवं क्रियाकलापों (हदीस) के आधार पर समय समय पर बनाया जाता रहा है और उसमें संशोधन भी होता रहा है इसलिए शरिया कई एक प्रकार के हैं और इनकी विभिन्न टीकाएं भी हैं। जाहिर है कि शरिया मानव निर्मित है न की ईश्वरीय या दैवीय जैसा कि प्रचार किया जाता रहा है। और समयनुसार इसमें संशोधन की पूरी गुंजाइश भी रहती है।

एक ऐतिहासिक उदाहरण है कि खलीफा उमर के समय भयंकर अकाल पड़ा जिस कारण उमर ने चोरी की सजा हाथ काटने को स्थगित कर दिया, ज्ञात रहें कि यह सजा कुरआन में वर्णित है फिर भी समयानुसार लोक हित में खलीफा उमर ने इस सजा को कुछ समय के लिए स्थगित करना उचित समझा।

विदेशी अशराफ और देशज पसमांदा में फर्क

पर्सनल लॉ के पक्ष में एक दलील यह भी दी जाती है कि इससे मुसलमान अपनी सभ्यता, संस्कृति और परम्परा को संरक्षित रखता है। इस आधार पर देखें तो स्वघोषित विदेशी अशराफ और देशज पसमांदा में मूलभूत अंतर है। पसमांदा की भाषा, भेष-भूषा,

सभ्यता, मान्यता, संस्कार, संस्कृति, आचार-विचार, व्यवहार आदि भारतीय क्षेत्र विशेष आधारित है जो अशराफ मुस्लिमो से सर्वथा भिन्न है। चेन्नई का पसमांदा श्रीनगर के पसमांदा से, अहमदाबाद का पसमांदा कोलकाता के पसमांदा से पुणे का पसमांदा वाराणसी के पसमांदा से भिन्न होता है, जबकि चेन्नई, श्रीनगर, अहमदाबाद, कोलकाता, पुणे और वाराणसी का अशराफ एक जैसे होते हैं। शेरवानी पहनते हैं उर्दू बोलते हैं, और बिरयानी खाते हैं जबकि पसमांदा स्थानीय वस्त्र धारण करता है स्थानीय भाषा बोलता है, और स्थानीय व्यंजन खाता है। कल्चर प्रिजर्व करने के नाम पर या इस्लाम के नाम पर अरबी/ईरानी कल्चर को देशज पसमांदा मुसलमानों पर क्यों थोपा जाय? आम खाने वाले लोगो पर खजूर खाने का दबाव क्यों? देशज पसमांदा के देसी कल्चर को प्रिजर्व करने की बात क्यों न हो? जबकि इस्लाम में वर्णित सिद्धांत 'उर्फ' ने किसी भी क्षेत्र विशेष के रस्म व रिवाज के पालन करने की छूट इस शर्त के साथ दिया है कि वो इस्लाम के मूल सिद्धांत से ना टकराते हों।

अंतरजातीय और अंतरधार्मिक विवाह को गैर इस्लामी मानना गलत

दूसरी बात यह है कि मुस्लिम पर्सनल लॉ बोर्ड द्वारा प्रकाशित पर्सनल लॉ से संबंधित पुस्तक 'मजमुए कवानीने इस्लामी' अंतरजातिय एवं अंतरधार्मिक विवाह को गैर

इस्लामी मानते हुए मुसलमानों के लिए अवैध करार दिया है जो एक भारतीय नागरिक को संविधान द्वारा प्रदत्त अधिकार का सीधा सीधा हनन है। क्या एक सेक्युलर देश में किसी धर्म विशेष द्वारा किसी समुदाय विशेष को इस तरह के असंवैधानिक कृत्य के लिए बाध्य किया जा सकता है?

मालूम होता है कि हमेशा की तरह इस मामले में भी शासक वर्गीय अशराफ वर्ग का द्विराष्ट्र सिद्धांत के तहत अलग पहचान बनाकर इस्लाम और मुसलमान नाम पर अपने निजी सत्ता एवं वर्चस्व का संरक्षण ही उद्देश्य है जिसका भुगतान देश और देशज पसमांदा मुसलमान करते आ रहें हैं। देशज पसमांदा समाज को यह सोचना होगा कि देश संविधान से चलेगा या शरिया से?

देशज पसमांदा मुस्लिमों का पक्ष सुना जाए

केन्द्र सरकार द्वार दाखिल हलफनामे में इस मुद्दे को अहम और संवेदनशील मानते हुए इसके लिए गहन अध्ययन और हितधारकों से विचार-विमर्श की बात कही गई है। देशज पसमांदा जो कुल मुस्लिम आबादी का लगभग 90% हिस्सा है एक बड़ा हितधारक समाज है, इसलिए इस मामले में देशज पसमांदा मुसलमानों के पक्ष को भी जानना समझना देश और समाज के हित में उचित होगा, मुस्लिम नाम पर सिर्फ संधात शासक वर्गीय अशराफ मुसलमानों से वार्तालाप काफी नहीं होगा।

भारत की सभी राजनैतिक पार्टियों और सरकार को यह बात साफ साफ समझ लेनी चाहिए कि भारत में मुसलमान का मतलब देशज पसमांदा होता है, अशराफ नहीं, जब तक वो इस गलतफहमी में रहेगें तब तक वो अशराफ का भला करके इस मुगालते में रहेगें कि वो पसमांदा का भला कर रहे हैं।

लेखक: फैयाज अहमद फैजी,
अनुवादक, स्तंभकार, मीडिया पैनलिस्ट,
सामाजिक कार्यकर्ता एवं पेशे से चिकित्सक हैं

यह लेख पहली बार 20 अप्रैल 2022 को
दिप्रिंट में प्रकाशित हुआ था



How Ambedkar, Munshi and Ayyangar argued for Uniform Civil Code

In November 2021, Allahabad High court strongly gave directions to the government to move forward toward the Uniform civil code. The same matter resonated 74 years back in the constituent assembly. If we look at the debate which took place, we can easily make an inference regarding who is blocking the route. Let's look at a few excerpts from the constituent assembly debate. The Constituent Assembly debated the Uniform Civil Code under Article 35.

Mohammad Ismail from Madras moved the following proviso for addition to Article 33 which provided that 'any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law'. He advocated that the right to adhere to one's own personal laws was one of the fundamental rights. He asserted that personal laws were a part

of the way of life of the people. In his evaluation, personal laws were the part and parcel of religion and culture. Any interference with the personal laws, in his view, would be tantamount to interference with the very way of life of those who had been observing such laws from generation to generation. He elucidated that India was emerging as a secular state and it must not do anything which hinders the religious and cultural ethos of the people.

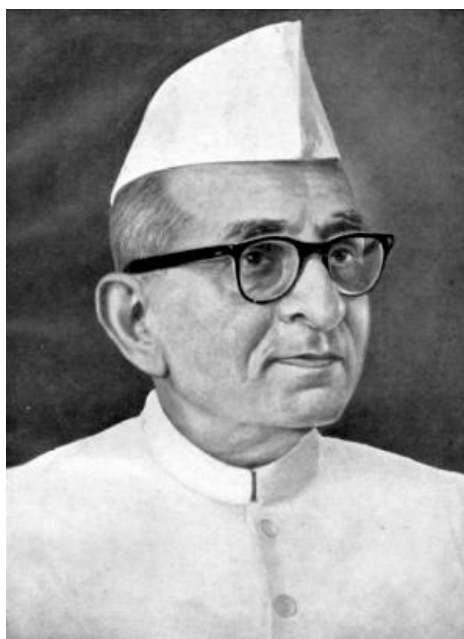
Mahboob Ali Beg emphasized that the civil code spoken of in Article 35 did not include family law and inheritance but since some people have doubts about it, it should be made clear by a proviso to assure that the civil code would cover the transfer of property, contract, etc., but not matters regulated by personal laws.

M.A. Ayyangar, a member of the Constituent Assembly, intervened and

remarked on it as a matter of contract.

Ayyangar tried to put his argument forcefully and asserted that the matrimonial contract was enjoined by the Holy Quran and the Traditions of the Prophet. He stated that the Indian concept of secularism tolerated the existence of all religions with equal honor and dignity. He emphasized that in a secular state like India, different communities must have the freedom to practice their own religion and culture, and they should be allowed to observe their own personal law. Moreover, organizations – of both Hindus and Muslims, questioned the competence of the Constituent Assembly to interfere with religious laws. Article 35 was thus, antagonistic to religious freedom.

K.M. Munshi expressed his views stating that even in the absence of Article 35 it would be lawful for Parliament to enact a uniform civil code



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since the article guarantees religious freedom given to the state power to regulate secular activities associated with religion. In some Muslim countries, for example, Turkey and Egypt, personal laws of religious minorities were not protected. Moreover certain communities amongst Muslims, for example, Khojas and Memons did not want to follow the Shariat, but they were made to do so under the Shariat Act, 1937. European countries had uniform laws applied even to minorities. Religion should be divorced from personal law. The Hindu Code Bill did not conform in its provisions to the precepts of Manu and Yajnavalkya. In essence, personal laws discriminated between person and person on the basis of sex which was not permitted by the Constitution.

Speaking in favour of a Uniform Civil Code and opposing the amendments proposed by the Muslim members, Alladi Krishnaswamy Ayyar said, "The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is

that different systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters."

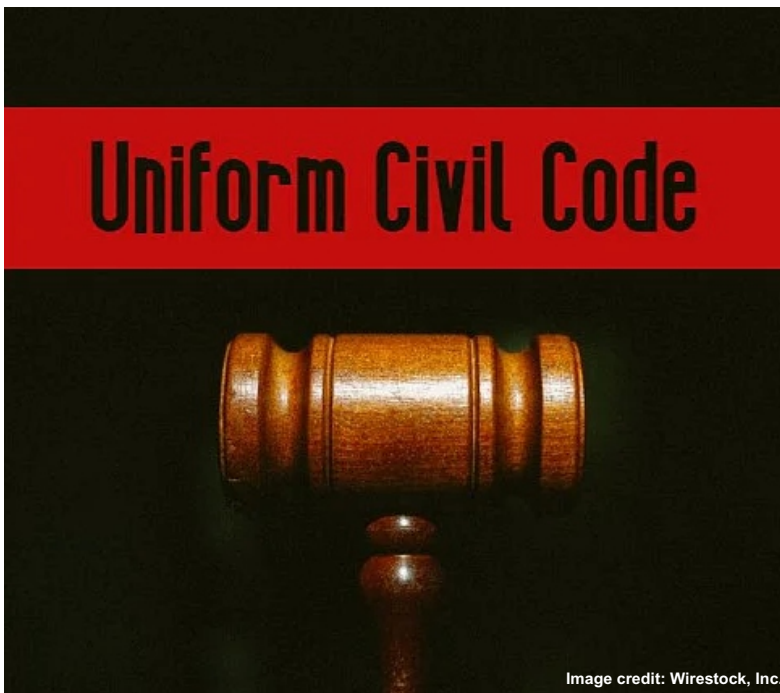
Dr. B.R. Ambedkar, although, did not accept the amendments and defended the right of the state to interfere in the personal laws of different communities. He defended the laws of different communities. He defended the arguments of Hindu members of the Constituent Assembly. But at the same time, he also gave some assurances to the Muslim members and he explained that the proposal was creating only a 'power' not an 'obligation'. Besides, Dr. Ambedkar persuaded the Muslim members *not to read too much into Article 44'*. He affirmed that even if the Uniform Civil Code was implemented, it would be applicable to those who would consent to be governed by it.

A few other members also spoke on the issue but the response of BR Ambedkar before the amendments were put to vote and negated, is worth noting. He said that the country already had a uniform

law in the matter of criminal code, a uniform law in the transfer of property, and the uniform law by way of the Negotiable Instruments act. "The only province the civil law has not been able to invade so far in marriage and succession. It is this little corner that we have not been able to invade so far and it is the intention of those who desire to have Article 35 as part of the constitution to bring about the change. Therefore, the argument of whether we should attempt such things seems to be somewhat misplaced for the simple reason that we have, as a matter of fact, covered a whole lot of the field which is covered by a Uniform Civil Code in this country."

On the amendments, Ambedkar referred to the statements by Muslim members that their personal laws were immutable and uniform across the country and said, "Now, I wish to challenge that statement." He pointed out that, until 1935, Shariat law had not been applicable to the North-west Frontier province. In fact, the NWFP followed Hindu law. The legislation had to be brought into include the province under the Shariat law. He added he had been informed that in the North Malabar region, a matriarchal form of law was followed by both Hindus and Muslims.

Ambedkar said that Muslim members were "reading too much" in the act and that it was possible that future governments of India could take baby steps to enforce it. It would be perfectly possible for Parliament to introduce a provision of that sort so that the fear which my friends have expressed here will be nullified." Things have not changed much since 1948. A section continues to block the idea of a Uniform Civil Code, but more to promote its vested interests than to protect the rights of the minorities.



Author: Pankaj Singh,
Psephologist and Director at PoliTricks



Uniformity at the Periphery: Uniform Civil Code in the North East

The Uniform Civil Code

When we talk of the Uniform civil code, we refer to and begin with The Lex Loci Report of October 1840, the Succession Act 1865, and The Indian Marriage Act 1864. Then we also talk about the Hindu Marriage Act, Succession Act, etc in the post-colonial period. And of course, we talk about Article 44 in the Indian Constitution that directs the state stating that "The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India."

The uniform civil code is a topic of discussion in the academic world, in the newspapers, in TV channel debates, and on primetime news. When one types "Uniform Civil Code" at JSTOR, the digital library used by academicians, 60,636 results come out. Since the pre-independence time, it has also been a topic of debate, from the Rukhmabai Case (1884-1888) and it continues to the post-independence time with the Shah Bano case in 1985. In the present-day discussion on secularism and the constitutional order, we cannot help but talk of the Uniform Civil Code (UCC).

But what is the Uniform Civil Code?

In a very short description, as introduced in Lok Sabha, Bill No. 250 of 2018, or **THE UNIFORM CIVIL CODE IN INDIA BILL, 2018**, by SHRI CHANDRAKANT KHAIRE, M.P., is A BILL to provide for the constitution of the National Inspection and Investigation Committee for the preparation of the Uniform Civil Code and its implementation throughout the territory of India.

"Under the Uniform Civil Code, a

collection of laws will be prepared which will protect the personal rights of all citizens without considering the religion, which seems to be the need of the hour." It aims at the prevalence of the constitutional order i.e., the precedence of law and legality over customs and justice over social norms. It is in all of its essences, empowering the forces of law over the forces of cultural orthodoxy to maintain and uphold the constitutional order of equality and justice.

What it means for the North East

What we called the "North East" today, meaning the Northeastern parts of India represent the eight states of the country. It includes Assam, Manipur, Mizoram, Nagaland, Meghalaya, Tripura, Arunachal Pradesh, and Sikkim. Each state has its own linguistic, cultural, and religious diversity.

In terms of population, from the 2011 census, only 3.716 percent of Indians inhabit the North East states. In terms of land, it represents about 8 percent of the territory of India. One denominator of all the eight states of the North East is the tribal population is almost all Christians and they represent a large section of the population. Of the 2.78 crores Christians that live in India, the North East region accommodates 78 lakh Christians (excluding Sikkim), forming 28 percent of the total Christian population in India. And of the four Christian majority states in India, all of them are from the North East. The other Hindu majority states like Manipur, Tripura, and Assam have a large Christian population as well, despite not being a Christian majority states.

And so the legal spaces of personal laws for the tribal Christians concerning

marriage, divorce, succession, or inheritance are determined by Christian laws like the Guardians and Wards Act, the Indian Christian Marriage Act of 1872, and various laws that the churches lay down, in conjunction with customary laws. And as an offshoot of the tradition of the Roman laws that the Christian countries adopted, Britain gave much of the Anglo-Saxon legal tradition in India, meaning the Roman legal tradition. The British also gave Christianity to the North East, while the Portuguese are to be blamed in South India. As such, many of the personal laws that the Hindus and the Christians have regarding marriage, divorce, succession, or inheritance unless constricted by customs, do not come into conflict as they are derivatively referred to and checked with the norms of the Anglo-Saxon laws that are considered the benchmark. And rightfully so, as the Anglo-Saxon legal tradition represents liberal democracy and of which India is the largest in the world. It then only boils down to the **Muslim Question** in the North East concerning the **UCC**. Because, as a fellow colleague in JNU, who is a tribe from Nagaland and a Christian once expressed, she as a woman "does not support customary laws in any shape or form, as it excludes women from the very existence and gives no right to her, and treats her as livestock, let alone treat her as an equal with the men". It is fair to say the Muslim women in North East would be liberated too from a Unified and Codified law free from the clerics that would otherwise govern her personal space.

Today, besides the state governments, the North Eastern Council (NEC) which was constituted in 1971 by an Act of



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Parliament is the nodal agency for the economic and social development of the North Eastern Region. The Ministry of Development of the North Eastern Region (DoNER) is given the responsibility for the matters relating to “the planning, execution, and monitoring of development schemes and projects in the North Eastern Region”. Ridden by conflict and development disparity, the DoNER ministry aims to pick up the pace of socio-economic development in the North East, to give the people in the region growth that is at par with the national targets. As such, economic and social development can only be equitable if inheritance or succession is dealt with by lifting women and the tribal population through support made in law and legal systems that take them out of the confines of customary laws.

In support of the Uniform Civil Code in Manipur

In a democracy, it is not the treatment of the majority but the treatment of the minority that determines the functionality of the system. In Manipur, Muslims came to Manipur numbering just a thousand roughly around 300 years ago and have grown into a thriving population of 239,736 (2011 census date). While the statistics for the indigenous population who have lived in Manipur for thousands of years since before the Birth of Christ stands at 215, 913 for the Thadous who are the second-

largest indigenous community (next to the Meeteis who are the Hindu population and the largest in the state), and the third-largest indigenous population i.e., the Tangkhuls stands at just 178,568. Mohammed Alimuiddin, a Muslim also became the first Chief Minister after Manipur was granted statehood in 1972.

What made this growth of the Muslims possible is the amalgamation of the Muslims with the Meeteis. They are in fact, despite the recent trend of Islamification and removal of surnames granted by the Meetei Kings, a hybrid of Meetei culture and the Islamic tradition that the Meetei Kings allowed the original Muslim settlers to maintain. And so, they maintained the Meetei language, the attires, and even cultural festivals like the Ningol Chakouba (a Meetei festival to celebrate sibling relationships between brothers and sisters). They were allowed to marry Meetei women and even given surnames from the Meetei lineage, yet they were allowed to maintain their religious identity and follow Islam despite living under a Meetei Hindu King and Hindu being the state religion. They hence came to be known as Meetei Pangals or Manipuri Muslims as distinct from other Muslims.

Analytically, **the argument in support of the Uniform Civil Code** then is that the tribal Christians and the Meetei Hindus converge on the traditions of the

Anglo-Saxon laws despite coming in from different directions in the codes of laws. And the Muslims in Manipur are unique, in that they are culturally Meeteis, and so despite following Islam, cases of Triple Talaqare unheard of in Manipur, Meetei culture wields considerable influence and is followed as a benchmark. The recent trends of strong Islamification of culture come from the connection that was established in recent times during the 70s and 80s when Manipuri Muslims went to U.P. and other parts of India to connect and learn “the ways and the laws of Islam” or in Manipuri to learn “Marubi” from their counterparts. The only people who would then hold back the **UCC in Manipur**, are the newly baptized Islamic Clerics and their laws which are recent phenomena in Manipur and the Manipuri Muslims, as they fear their loss of relevancy and power.

Conclusion:

Looking at it from a disinterested and uncritical angle, the **Uniform Civil Code** seems like a sword against secularism if we follow the arguments of critics. But looked at more critically, the Uniform Civil Code represents **Secularism** in the true sense i.e., the abstinence of the state from religion and the use of the state to promote a forward-looking society based on equality, justice, and liberty. It can also be argued that with the non-implementation of **Article 44 of the constitution**, or the Uniform Civil Code as we know it in everyday terms, a violation occurs from articles 14 to 18 of the constitution that gives the fundamental Rights of equality and prohibition of discrimination based on sex and religion, as customary laws keep justice and equality at the confines of Clerics and chieftains.

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Uniform Civil Code: A Muslim Women's Perspective

Given the realities of our history post-independence and the kind of animosity that existed between the communities of India perhaps the founding fathers of the constitution felt it was prudent to make provisions to accommodate civil laws based on religious identity. However given we have reached 75 years of independence, it's high time to relook at these provisions within the constitution in order to reduce legal complexities and create a situation of uniformity and equality in the eyes of law. Going forward if India has to be a strong nation with 'Aatmanibharta' at its core and an internally stable society by the time India celebrates its diamond jubilee of independence, we need to initiate and implement long-pending reforms.

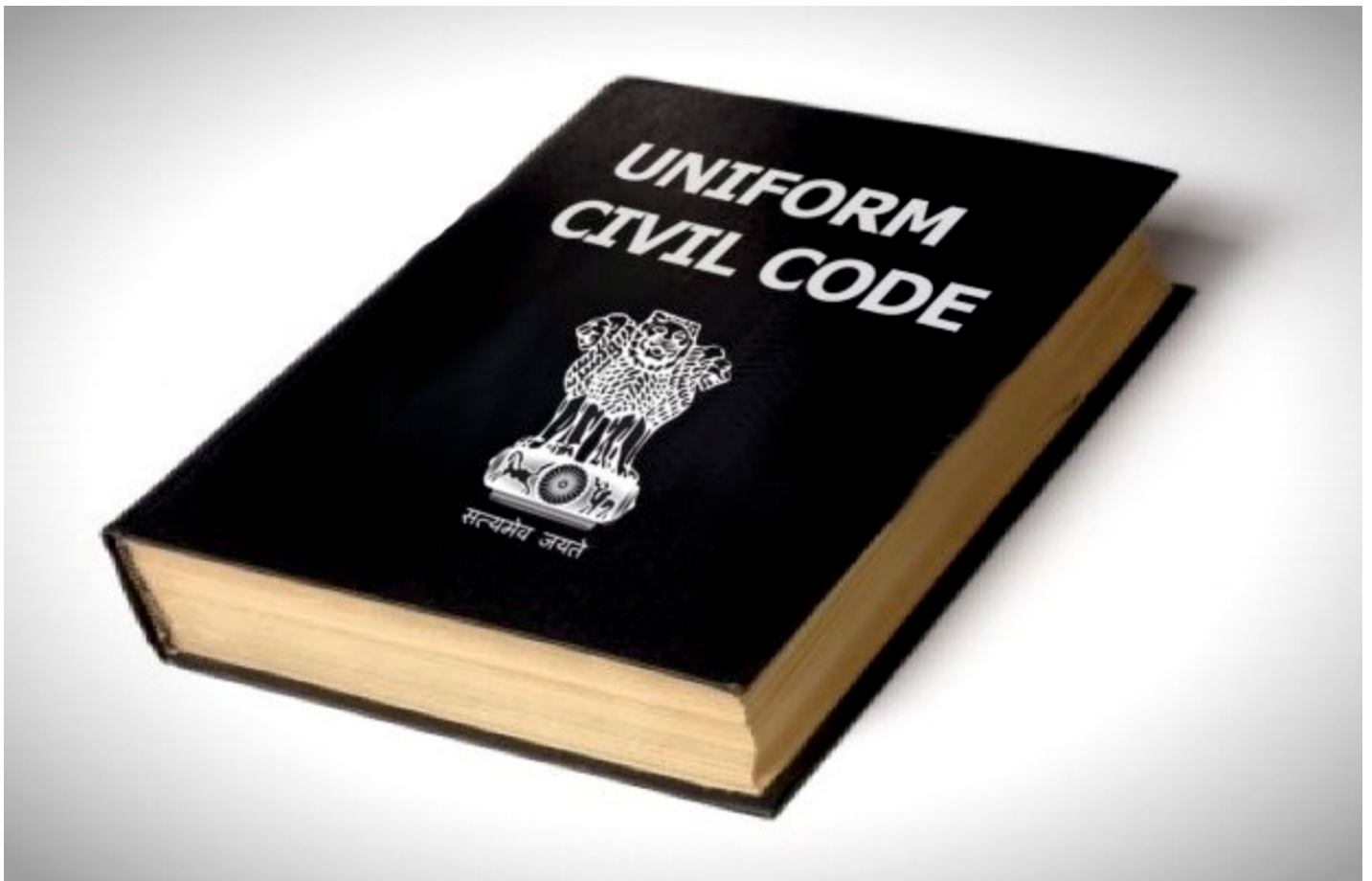
India is becoming a fast emerging global power on the planet yet a tragically significant section of women in our

nation, the battle to live with human dignity and regard. Women, regardless of their race, class or caste are becoming the victims in the hands of this society - socially, politically, and economically. Every day the number of incidents with respect to the infringement of their freedoms are accounted for in mainstream media yet we as a society failed to find a solution. Our constitution provided certain strong safeguards in Part III of the constitution for the protection of individual rights irrespective of their identity in terms of caste, creed, religion, race, sex, and place of birth. It has placed solid shackles on the state not to make any regulations in such a manner which might create discrimination on any of the previously mentioned grounds. Every religion is left free with the discretion to frame their own personal laws but, in such a manner getting them far from legal grasp.

The personal laws are a part of the Concurrent List in the Seventh Schedule. Therefore, under the Constitution, the power to legislate in respect of personal laws rests with both Parliament and the state assemblies. However, if Parliament passes a law on the subject, the state law cannot contravene it (unless it passes a bill that gets presidential assent in that regard). For Hindus, this process is more or less complete. For instance, the Union government can now make amendments to the Hindu Marriage Act section number 5 in the union list. Since the state practices more power with respect to the personal laws of Hindus when contrasted with, say, Muslims, the issue stays dubious. If we insist on bringing in reforms like the Uniform Civil Code in a county like India, one must also have an understanding of the first-order, second-order, and third-order implications of such reforms. Therefore, when reforms like UCC are being mooted they should only be viewed as initial steps and be prepared for tweaking and tailoring them whenever the need arises. It is an iterative process and should not be seen as an end in itself.

The fact that there has been no codification of Muslim personal laws to date implies social reforms need to come through piecemeal endeavors and should begin from within the community. The fundamental question that arises in the general public will be - Why should they adopt the UCC? What can they benefit from UCC? How will it be implemented? - so on and so forth. Hence, there is a need for proper channels of communication and information dissemination mechanisms in order to curb deliberate disinformation and misinformation





efforts. The onus of carrying out this effort will solely lie in the hands of the State as it is the only overarching entity that has the wherewithal to maintain law and order and to transition smoothly into the new legal regime. The case in point is the annulment of triple talaq and the disinformation efforts carried out to stall the process. While there was an interest from sections of the Indian Muslim community, it was necessary to bring in the perspective of individual rights as opposed to group identity. The All India Muslim Personal Law Board could therefore make no substantial strides in stalling the reform. The annulment came when Parliament passed the law and the Supreme Court of India maintained it (prominently, not on the grounds of gender equality but rather Quranic understandings, however, a (similar) privilege was not reached out in, for instance, the Sabarimala case). It is a myth that the UCC essentially implies

the nullification of diversity. The huge change that it may bring is the codification of the regulations, initiating a discussion on what to change and what to preserve. It is likewise a myth that a UCC would force demands on the Muslim community.

In the inception of these fundamental freedoms in our constitution particularly in the domain of religion, they might have been prudent and appeared great back in the day in a largely poverty-stricken and under-educated society. Yet today, the time is radically different, women are getting edified in all fields and are occupying the most respectful and demanding positions and are becoming aware of their rights and have for years been challenging existing legal provisions that are deemed unfair by them. Many women & men today have questioned or are questioning the idea of religion itself and by virtue, the legitimacy, validity, and applicability of

religion-based legal mechanisms. The Indian Muslim personal law is perceived by many women as intrinsically one-sided against women and that can be easily abused. Additionally, in view of the use of personal law on questions of marriage, divorce, maintenance, inheritance, and the like, Muslim women are denied the benefits that they may acquire through secular laws and which their counterparts from other religions appreciate.

The more extensive and imaginative application of constitutional and international law principles to personal law could add numerous advantageous changes. The main changes that civil society stakeholders are presently requesting are the privilege of all Muslim women to acquire agrarian land (just about half of them have this at this moment), the award of equivalent shares to conjugal partners in matrimonial property, the restriction of rights to will



Image credit: AMIT DAVE

Hindu property which is often used to disinherit women, and the decomposition of jointly owned Hindu property into individual shares. Although the question of maintenance of Muslim women has been settled by the Supreme Court, the judicial decisions came through a long-drawn litigation process, cumbersome legislation, and political chaos. From Shah Bano to Danial Latifi, it took 15 years for Muslim women to get where they are today. Things would have been much easier for them had a UCC been in place.

Halala is the methodology endorsed for remarrying a divorced spouse. It involves the (previous) spouse's wedding to another man, culminating in the marriage and hence getting a separation utilizing a similar elaborate method. Solely after that is she qualified to wed her first divorced spouse once again. Imagine it is still not abolished even though it violates the basic rights and the dignity of a woman. She will access no court to authorize her matrimonial rights in the event that her subsequent spouse doesn't separate from her and in light of the fact that when attempts, her better half will guarantee that the second marriage between them was void. There are different reasons given by Muslim scholars to legitimize

polygamy. Yet, the focal point of this discussion ought not to be the limits Islam puts on polygamy; it ought to be whether polygamy as a practice is at all acceptable in the 21st century? Assuming the spouse of a Hindu or a Christian man has the privilege to bring criminal allegations against her significant other for bigamy, then why should Muslim women be denied of this right?

It is an indisputable and all-around acknowledged rule that one needs to give prime significance to one's religion, custom, culture, and customs. These provisions are revered under Articles 25-28 of our constitution giving religious freedom to all religions. It made ready to personal laws as fitting to one's religion and culture. But under the guise of these religious freedoms, personal laws come in frequent conflict with other fundamental rights guaranteed under Articles 14-15, and Article 21. Practically all personal laws in one way or the other clearly manifest certain gender-discriminatory provisions. Uniform civil code was an extremely disputable article during the drafting of the Constitution and the procedures of the Constituent Assembly appear to show that the choice of setting the uniform civil code in the Directive Principles and not the fundamental

rights was a demonstration of 'compromise'- between both sides. It was a way for the Constituent Assembly to concede the taking a choice and permit future councils to take the last call.

UCC has been for all times related to the Indian mindset that it's against the Muslims. They felt that the personal law of inheritance, succession, etc. is really a part of their religion. If that were so, Indian women can never be given equality with a man who is enshrined in Art.14 of the Constitution. Hindus have been relatively more tolerant of a modern take on the uniform law hypothesis. A few regulations have been administered from the British period till date, the latest revision being in the succession Act, concerning the coparcenary inheritance. The most recent fifty years have been a miserable exercise in futility. There has been no assortment of relevant data about the numberless semi-visible groups and communities, and no exposure of the masses to the idea of the UCC. There has been no draft bill of it. The words UCC have not been thought about appropriately. Do we need a Uniform Civil Code or a Common Code? Are these two same? Do we want to put together a Common Code which borrows all that is best from existing personal laws in India? We have not dedicated ourselves to these inquiries. Besides, is there a 'perfect' law to be taken as a norm for other individual regulations to be enacted? Obviously, it is actually the case that a UCC has its own advantages and disadvantages, and that political groups advancing a UCC might have ulterior motives. Be that as it may, for Muslim women, a UCC will be a boon - it will carry more gender equality and extend their privileges with regard to marriage, divorce, inheritance, guardianship, and other personal matters.

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समान नागरिक संहिता |

उत्तराखंड के नवनिर्वाचित मुख्यमंत्री पुष्कर सिंह धामी और उनकी कैबिनेट द्वारा राज्य में समान नागरिक संहिता या यूनीफ़ॉर्म सिविल कोड लागू करने के लिए चुनावी वायदे के अनुसार कमेटी गठन करने के पश्चात देशभर में इस मुद्दे की चर्चा एक बार फिर ज़ोर पकड़ रही है। भाजपा शासित कई अन्य राज्य भी इसी तरह की पैरवी करने के मूड में दिखायी दे रहे हैं। वहीं विपक्ष इसे शंका और 2024 के लोकसभा चुनाव के मद्देनज़र भाजपा की नई सियासी चाल के तौर पर देख रहा है। राजद नेता तेजस्वी यादव ने अपनी तुष्टिकरण की राजनीति के अनुरूप ही संसद में इसका विरोध करने की बात कही है और आल इंडिया मुस्लिम पर्सनल लॉ बोर्ड ने तो समान नागरिक संहिता को ही असंवैधानिक कह दिया है जबकि भारत का संविधान ही राज्य के नीति-निर्देशक तत्वों का उल्लेख करते हुए भाग - 4, अनुच्छेद 44 में स्पष्ट रूप से कहता है कि राज्य समस्त भारतीय गणराज्य के नागरिकों के लिए समान नागरिक संहिता लागू करने का प्रयास करेगा। देश की सर्वोच्च अदालत और संविधान की संरक्षक मानी जाने वाली संस्था - सुप्रीम कोर्ट भी गाहे बगाहे केंद्र से इस मुद्दे पर जवाब-तलब करती ही रहती है और 2015 में समान नागरिक संहिता को देश के लिए आवश्यक भी कह चुकी है। स्वतंत्र भारत की किसी भी सरकार ने आज तक समान नागरिक संहिता लागू करने की इक्षाशक्ति नहीं दिखाई है और इसका प्रमुख कारण है छद्म धर्मनिरपेक्षता और समाज विशेष के प्रति तुष्टिकरण का रवैया। देश के तत्कालीन मुख्य न्यायाधीश जस्टिस वाई.वी चंद्रचूड ने 1985 में विवादास्पद शाह बानो केस पर टिप्पणी करते हुए और समान नागरिक संहिता की पैरवी करते हुए कहा था कि यह क़ानून के प्रति असमान निष्ठा वाली विरोधी विचारधाराओं को अलग करके देश को एक सूत्र में पिरोने के कार्य में मदद करेगा।

समान नागरिक संहिता के मूल में एक ऐसे क़ानूनी ढाँचे की परिकल्पना है जिसके तहत भारतीय नागरिक किसी विभेद के बिना विवाह, तलाक़, उत्तराधिकार, रख-रखाव, दत्तक ग्रहण इत्यादि जैसे सिविल मुद्दों पर एक ही क़ानून की कसौटी पर कसे जाएँगे। वर्तमान में ब्रिटिश औपनिवेशिक काल से चले आ रहे धार्मिक पर्सनल क़ानूनों के कारण भारतीय न्यायपालिका समान मुद्दों पर विभिन्न धर्मों को विभिन्न आधारों पर जाती है। गोवा राज्य एक अपवाद है जहां पुर्तगाली शासन के समय से ही एक क़ानून लागू है। स्वतंत्रता पश्चात नेहरू सरकार में हिंदू (जिसकी परिभाषा में सिख, जैन, बौद्ध भी आते हैं) धर्मावलंबियों के लिए तो उनके क़ानून में 1955-56 में कई सुधार किए गए और हिंदू क़ानून का वस्तुतः सेक्युलरीकरण कर दिया गया पर मुस्लिम, क्रिश्चन, पारसी धर्मावलंबियों को ऐसे सुधारों से बाहर रखा। मसलन विवाह, तलाक़, उत्तराधिकार, रख-रखाव, दत्तक ग्रहण जैसे मसलों पर मुस्लिम समाज से जुड़े मुक़दमों पर इस्लामिक शरिया क़ानून के अंतर्गत कोर्ट निर्णय लेता है। शरिया क़ानून को पड़ोसी अफ़ग़ानिस्तान में पूरी कठोरता से तालिबानी हुकूमत लागू कर रही रही है और यहीं एक प्रश्न जन्म लेता है कि क्या भारत गणराज्य में जिसके संविधान पर हम गर्व करते हैं वहाँ सभी भारतीय नागरिकों को एक ही क़ानून के अंदर क्यूँ नहीं रखा गया है? शाह बानो जैसे केस जहां सुप्रीम कोर्ट के निर्णय को तत्कालीन राजीव गांधी सरकार ने दबाव में आकर संसद से पलट दिया था, परस्पर स्मरण दिलाते हैं कि जब तक क़ानून ही भारतीयों में फ़र्क़ करेगा तो एक राष्ट्रीय और सर्वव्यापी चेतना का उदय कैसे होगा?

एक आधुनिक समाज में जहां धार्मिक नियमों की आड़ में बाल विवाह, बहुविवाह जैसी कुरीतियाँ कुछ समुदायों में क़ानूनी तौर पर मान्य हों और कुछ के लिए ऐसा करना

क़ानूनी तौर पर दंडनीय हो, वहाँ एक सामान्य, कानूनप्रिय नागरिक भी न्याय प्रणाली पर संदेह करनेलगता है। विशेषकर ऐसे क़ानूनों का अस्तित्व उन समुदायों की आधी आबादी पर अत्याचारों की स्वीकृति देता है 21वीं शताब्दी में एक प्रगतिशील गणराज्य के माथे पर एक कलंक ही कहा जाएगा। इन समुदायों के महिला समाज से भी समान क़ानून की माँग उठती रहती हैं। तीन तलाक़ के मुद्दे पर कई मुस्लिम महिलाओं ने प्रखरता से समानता की बात की थी। धार्मिक क़ानून इन समुदायों की उन्नति में भी एक बहुत बड़ी बाधा हैं और उन्हें रूढ़िवादी सोच में जकड़े रखते हैं। यही रूढ़िवादी वर्ग आज समान क़ानून के विरोध में खड़ा हैं। वैश्विक तौर पर उभर रही एक शक्ति के रूप में भारत की चौतरफ़ा उन्नति बिना एक क़ानून अपनाए सम्भव नहीं है। केंद्र में पूर्ण बहुमत के साथ आसीन भारतीय जनता पार्टी अपने तीन मुख्य वैचारिक स्तम्भों में से दो का वायदा पूर्ण कर चुकी है और यही कारण है अब विपक्ष अंतिम स्तम्भ के निर्माण की सुगबुगाहट से परेशान है। नरेंद्र मोदी सरकार के कंधों पर अब यह दायित्व है कि वह जनादेश और संविधान का सम्मान करते हुए देश में समान नागरिक संहिता की दशकों पुरानी मांग को पूर्ण करने की दिशा में मज़बूती से कदम बढ़ाए।



लेखक: शिवम् सती,
पूर्व छात्र, दिल्ली विश्वविद्यालय



Bhartiya Janata Yuva Morcha



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