

UNIFORM CIVIL CODE: SHOULD BE OR SHOULD NOT BE

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It won't be incorrect to call India a *secular republic de jure rather than calling her a secular republic de facto*. Though we declared our nation secular long back in 1976 by the 42nd Constitutional (Amendment) Act, we failed to adopt the concept both legally as well as practically. The Indian Constitution is stuck in a more or less compromise situation at present where the judiciary can be seen endeavouring to strike a balance between the Fundamental Right and the Directive Principle of State Policy. The significance of Uniform Civil Code could be inferred from the fact that the framers of the constitution devoted a full article to it. The Indian constitution includes the setting up of a Uniform Civil Code for its citizen under Article 44 in Part IV-The Directive Principle of State Policy. Article 44 states: "The State shall endeavor to secure for the citizens, a uniform civil code throughout the territory of India."

The issue of Uniform Civil Code has been in the limelight since 1995 when Supreme Court in the landmark judgment of **SARLA MUDGAL v. UNION OF INDIA AIR 1995 SC 1531**, stressed on the need for the Uniform Civil Code in matters of marriage, inheritance, succession, etc. In the opinion of the court the Fundamental Rights relating to religion of members of any community would not be affected thereby. The Hon'ble Supreme Court served that permissibility of bigamy under Muslim Personal Law is inconsistent with the laws governing other communities in India and opposed to public morals and therefore should be supplemented by a Uniform Civil Code. Similar sentiments were expressed by the Hon'ble Supreme Court again in 2003 when while passing its verdict in the case of **JOHN VALLAMATTOM v. UNION OF INDIA AIR 2003 SC 2902** directed scraping of section 118 of the Indian Succession Act 1925 applicable only to Christians. It can, therefore, be concluded that Uniform Civil Code is meant to constitute a legal framework of secular laws which shall govern activities like marriages, inheritance and divorce which are presently controlled by personal laws of various

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religions and lead to a state of *utter confusion, discrimination and injustice*.

The greatest benefit that would result from Uniform Civil Code is a more egalitarian society where every single individual would be guided by the same laws relating to personal issues. Absence of Uniform Civil Code undermines the credibility of secularism in India and promotes social disparity. Different personal laws have different ways of dealing with issues relating to marriage, succession and so on. There should be an element of uniformity governing such activities which should ideally be administered by the State.

Another problem with the personal laws is that these laws are generally biased against the women. Women are often seen at the receiving end of these laws. It became a matter of debate after the Supreme Court's verdict in the **MOHD. AHMAD KHAN v. SHAH BANO BEGUM 1985 SCR (3) 844** case. The case was about the right to maintenance after divorce. According to Muslim Personal Law, the husband was not obliged to pay the maintenance after divorce. This was challenged and the Court ordered that a husband has to provide maintenance for a divorced wife with no means of income. The judgment created an uproar among the conservative sections of the Muslim community as a result of which the legislation had to enact a law to cover up the judgment.

Such unreasonable and unexplainable discrimination against women is found in other personal laws also. For instance, the Hindu Succession Act favours men in issue of property rights. Similarly blatant discrimination against women in divorce law can be observed from the fact that in order to get a divorce, while a Christian women has to prove charges against her husband on adultery alongwith bigamy, incest cruelty, change of religion, etc, the husband gets away by proving the charges of adultery alone. Likewise the right to triple talaq bestowed upon the muslim men is both discriminatory and derogatory against women at the same time. It is these practices which augment and accelerate the position in favour of a uniform civil code for all religion and for all gender.

Another advantage of Uniform Civil Code worth mentioning is that it would *simplify the cumbersome legal process* involved with

the matters governed by the personal laws. It would be way easier to seek redress for our grievances. The process will be *simple, uniform, justified as well as justiciable*. It will also help to adapt our legal system to the changing social realities and it would be easy to amend and re-amend it as and when required. **The prevailing personal laws are inept to deal with circumstances arising from growing economic self-reliance and literacy of women in present era.**

However, it is imperative and advisable to look into the other side also. Uniform Civil Code is covered under the Directive Principles of State Policies while Freedom of Religion and Conscience are guaranteed under the chapter of Fundamental Rights. It is often argued that State cannot frame and implement a policy which takes away or abridges the Fundamental Rights of citizen. Those who argue against the Uniform Civil Code are of the opinion that matters like marriage, divorce, maintenance, succession and so on are religious affairs and the Constitution guarantees freedom of such activities and therefore a Uniform Civil Code will be a violation of it. *The Supreme Court has observed that marriage, succession and like matters are of secular nature and cannot be brought within the guarantee enshrined under Art 25 and 26 of the constitution held that right to one's personal law is not a fundamental right.*

Another argument against immediate introduction of Uniform Civil Code is that India is a land of vast culture and diversity and it is very easy to initiate communal disharmony based on religious and social differences. India witnessed a large scale religious riot right after independence in 1947. The harsh history was repeated again during Babri Masjid destruction then re-repeated at Gujarat Riots and Muzaffarnagar Riot. There is, no doubt, that there are selfish political leaders who just in order to win elections are ready to sacrifice communal harmony and brotherhood. Keeping in view these harsh realities it should be understood that the time is not yet ripe for the implementation of the Uniform Civil Code. *Polarization in the society is very much alive in our country and Uniform Civil Code cannot be immediately introduced without vast bloodshed.* Therefore, it should be deferred until political and social consensus is achieved.

Thus, it is imperative that the demand for Uniform Civil Code should come from all sections of society, specially minority communities. The pros and cons of Uniform Civil Code should be thoroughly discussed and debated by all. Enlightened and responsible Statesperson should come forward and promote the need and necessity of Uniform Civil Code amongst the commoners and motivate them towards a common consensus that aims at establishing a Uniform Civil Code for the entire Republic of India.