

UNIFORM CIVIL CODEGAYATHRI VIJAYARAGHAVAN¹**Abstract**

One of the notable issues which is considered to be a hot topic is “Need for UCC”. In this present situation it has been discussed widely the importance of “UCC” and some demerits. Debates are undergoing for the implementation and it has also been made as a separate bill. This article deals with the meaning, its base and both merits and demerits.

Introduction:

The importance of “UCC” has made known to all through the recent bills passed, amendments and the information gained through media in the form of news, debates and paper writings. In this urge this article gives some basic idea for the need for the implementation and some disadvantages at the time of implementing.

Meaning:

It refers to a single law, applicable to all citizens of India in their personal laws which includes marriage, divorce, adoption and maintenance.²

Motive:

The reason for its enactment is to replace all the personal laws of the diversified religious system in our country.³

Base:

The idea comes from the article 44 of the Indian constitution which deals with the DPSP which lays the base for the applicability of UCC throughout the territory of India.

⁴DPSP are defined under ‘article 37’ of the constitution which says that

¹ Second year, BBA LLB (Hons), Sastra University, Thanjavur.

² <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>

³ <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>

“Application of the principles contained in this Part The provisions contained in this Part 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.”

It gives a wide explanation that it is not a fundamental right which can be raised against the courts. All citizens are eligible to claim the right but they cannot demand as fundamental right. The courts have the option to treat the case under ‘UCC’. It has started to use its power from the landmark judgements.⁵

Landmark cases:

The first case which talks about the need for ‘UCC’ is *Ms. Jordan Diengdeh vs S.S. Chopra on 10 May, 1985*. In this case S.C has decided based on ‘article 44’ of the constitution as the marriage is done by their religious customs and it referred to various acts related to marriages under Hindu law and in order to do justice for the women it suggested for the enforcement of ‘UCC’. The women claimed maintenance under ‘article 44’ of the constitution.

The subsequent case *John Vallamattom and another v. Union of India (Writ Petition (civil) 242 of 1997)*. This case is based on the facts of succession and governed under s.118 of Hindu succession act. It has been said it is not violative of ‘articles 32,14,15’ of the constitution. The judgement held by the learned counsel is stated as follows

⁸He further felt that the right conferred by Article 15 was personal rather than applicable to a group and therefore it was not relevant to the case. ⁹Finally, the judge allowed the petition by a

⁴https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles/Article%2037

⁵ <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>

⁶ <https://indiankanoon.org/doc/569459/>

⁷ <https://www.equalrightstrust.org/sites/default/files/ertdocs/>

⁸ <https://www.equalrightstrust.org/sites/default/files/ertdocs/>

⁹ <https://www.equalrightstrust.org/sites/default/files/ertdocs/>

unanimous decision of the Court and declared ¹⁰ s. 118 of the Indian Succession Act unconstitutional as violating of Article 14 of the Constitution.

The most notable case which brought change is ¹¹*The Shah Bano case.* ¹²We need to take some time to consider a possible historic opportunity that had presented itself to the Rajiv Gandhi government to make substantial changes to the position and status of Muslim women. This pertains to what is now known as the Shah Bano case of 1985.

Facts:

Bano was a 73-year-old woman who bravely, and with much courage, sought maintenance allowance from her husband, Muhammad Ahmad Khan, who divorced her after 40 years of marriage by the triple talaq system as permitted under the Muslim personal law. He refused her claim for maintenance and the matter went into protracted legal proceedings. Though Bano was initially granted maintenance by the verdict of a local court in 1980, the matter was taken up to the Supreme Court, which finally ruled in her favour under the provisions of Section 125 of the Code of Criminal Procedure, (Cr.P.C) 1973, which applied to all citizens irrespective of religion. It further recommended that the long pending UCC be set be finally enacted.

The Shah Bano judgment observed thus:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one

¹⁰ <https://www.equalrightstrust.org/sites/default/files/ertdocs/>

¹¹ <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

¹² <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."¹³

The above said landmark cases have stir the need for the enactment of 'UCC' for the benefit of citizens of our country.

Present position:

¹⁴The Hindus are governed by separate bills and it results in four bills as a whole which includes as,

- ∞ Hindu marriage act
- ∞ Hindu succession act
- ∞ Hindu minority and guardianship act
- ∞ Hindu adoption and maintenance act

The Muslims are governed by their respective personal laws based on their schools and which has a base from 'Quran'.

The Christians are governed by Christian marriage act and Indian succession act respectively.

Need for 'UCC':

'UCC' is recommended by the legislation in order to replace all the above said laws as the rules varies based on the religion. In order to bring fair treatment to all citizens and to give equal

¹³ <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>

¹⁴ <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>

remedial measures to the affected victims or parties without any discrimination and justice should reach every citizen this suggestion is made and the bill is still pending.

¹⁵Merits of 'UCC':

Gender Equality: This will be the best advantages especially for women as still after so many years of independence, they are battling and struggling for their rights. Personal laws of almost all religions are discriminatory towards women. Uniform Civil Code (UCC) will enable to abolish gender discrimination and will bring both men and women at par.

Equal Status for All: Uniform Civil Code (UCC) will have a common civil and personal law which is equal for all irrespective of their religion, class, caste, gender etc.

Help in Build a new society: Almost 55% of Indian populations are below 25 years. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity. Uniform Civil Code (UCC) will help to utilize their full potential towards nation building.

Support and Promote National Integration: After the formation of Uniform Civil Code (UCC), every citizen will be equal which will boost the national integrity. Then the gender, caste, creed, etc. will not be a matter. "one nation one election" principle.

Social Reform: India is a secular country and has so many personal laws which discriminate Indian citizen on the basis of gender, religion, culture, etc. and every personal law is different from other law. So, after the implementation of Uniform Civil Code (UCC), India will undergo another social reform in this century and Indian citizen will also enjoy a codified personal law.

Constitutional mandate: It has mentioned in 'article 44' of the constitution as 'DPSP' which states "The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". It cannot be enforced by the court. The legislature can enforce it by framing a law.

¹⁵ <https://www.freetohit.com/uniform-civil-code-advantages-and-disadvantages/>

¹⁶Demerits of ‘UCC’:

Practical difficulties: India is a country with diversity in religion, ethnicity, castes, etc. Hence it is practically not feasible to come up with uniform rules of personal issues like marriage due to the cultural diversity. Most people did not like to replace their traditional laws to a new one.

Violation of religious freedom: The minorities are in that fear that traditional values will be lost to a great extent. The new process of thinking is not appreciated by all.

The state should not interfere in personal matters: The constitution provides the citizen the freedom of religion of their choice. ‘UCC’ would violate that freedom.

Sensitive and difficult task: While dealing with the minority communities it should decide the case as unbiased.

Time is not suitable yet: As already many controversies like college curriculum, love jihad, etc. In this time the introduction of ‘UCC’ which badly affects the Muslim communities. They feel they are insecure and vulnerable get attracted towards fundamentalist and extremist ideologies.

The above said are the merits and demerits of ‘UCC’.

Conclusion:

It is difficult to implement in India with the above said demerits. But in future it is expected to be implemented. It is addressed even by our ‘Honourable P.M.’ of India. Soon ‘UCC’ will be accepted based on the changing circumstances at the present situation.

¹⁶ <https://www.iasepress.net/uniform-civil-code/>