



# **Uniform Civil Code: Necessity And Impediments In Its Implementation**

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## **ABSTRACT**

The paper primarily discusses the reason for the necessity of UCC. Consider several social, political and constitutional reasons for the necessity of UCC. Also discusses the impediments and hurdles in the way of implementation of UCC. There are several impediments which can delay the implementation of UCC. This paper also discusses the practices that are in dispute and discusses how the implementation of UCC will eliminate these practices and will bring equal status of women in India. There might be many other technical reasons for the application of UCC, but this research paper does not discuss technical aspects in much depth. This paper discusses the social, political and constitutional aspects mainly. This paper ends with the conclusion that if UCC is brought, how it will be a revolutionary step in the history of this nation and will be a major scale changer for the women of this country.

## **Introduction:**

One of the cardinal principles of the Indian constitution is its secularism. Which means that the State does not have its own religion and all religions are equal in its eyes. India is a country where a number of communities and religions exist. The roots of personal laws have been deeply sowed. But, presently these personal laws have been a major reason for social disturbance, political instability and conflicts among the citizens of the country. All the castes and communities are managing their personal laws in their own ways. The concept of Secularism also means that the State shall not interfere in its religious matters. But the concept of UCC as generally understood is not interference in the personal matters of the citizens, but is the policy matter. Because, to maintain the Civil rights of the citizens is intra-vires to the Constitution. Also, that concept of UCC is mentioned under Directive Principles of State Policy and DPSP are taken as Constitutional goals and fundamental rights as means. That's why to achieve goals, means might be changed. Since 1990, UCC has been a specific goal to be achieved and outlining a common code has been a national concern. From both the sides, i.e., majority and minority, arguments have been advanced in favour and against. Majority side of the country have always been in favour of the implementation of UCC and its dire necessity. Because, they consider that UCC will protect the rights of women. Of minority communities, as the arrangements under religious and codified laws inspire discrimination against women. On the other hand, minorities come up against the implementation of UCC, as according to them, such a code would delimit the minority social character, the protection of which is the major duty of the majoritarian government of the country.

The debate on the UCC can be traced back to the colonial period in the country. After independence, a sound discussion was also held in the constituent assembly, where the provisions of UCC was put under DPSP's which means that the implementation of UCC is not justiciable in India. But the need was at the very time of Constitution making. The great leaders of the country Pandit Nehru and Ambedkar also supported the idea of UCC, but due to the heated opposition by Muslim leaders, UCC got place under the head of DPSP under Article 44 of the Indian Constitution.

There are several factors on the basis of which implementation is affected. The foremost of those is lack of true information about the UCC. Because several persons in the society have spread mis-information in the society that the implementation of UCC will lead to the tinkering with the personal laws of the minority communities, while the truth is totally inverse. They have been totally misguided by the political parties as well.

### **Research Methodology:**

This is a doctrinal study. Researcher has used case laws, law books, public interviews and have used extensive public interviews to make a Holistic view.

### **Objectives:**

1. To understand the necessity for the UCC for the country.
2. To understand the possible hurdles in the implementation of the UCC.

### **Reasons for the necessity of Uniform Civil Code:**

The idea of Uniform Civil Code is mentioned under the Directive Principles of State Policy in our Constitution. It means the provision is not justiciable, i.e., cannot be enforced by the Courts, however the State is duty bound to implement the idea when the right time permits. The major reasons that why the provisions of the UCC should be implemented by the State are as follows:

1. The Constitution makers have paid a great attention towards the unity and integrity of the nation. It was a major concern at the time of independence. Also, national harmony is a necessary factor for the national integrity of the nation. Also the cooperation among different communities is also a deciding factor for the National Integration. India is a country where a number of religions, customs and traditions exist. If harmony among them is not maintained in that case, integrity of the country is not possible and Uniform Civil Code can create a unification among all these communities. Hence, it is necessary for the national integrity of the country.
2. Since independence the concept of UCC has been a beneficial agenda for the political parties. Political parties at times have guided and misguided the citizens on the agenda of UCC. Since 1990, it has been a great concern for the political parties. If UCC is implemented nationwide in that case, vote-bank politics will somehow come to an end. Political parties take edge on social political issues and if such issues are settled in that case a wrong politics comes to an end. In this way Uniform Civil Code can be an effective instrument to reduce vote bank politics. Non implementation of UCC might lead to the non-democratic practices by political parties and this situation has to be changed.

3. If acceptance of personal laws is made in that case the death of Human Rights is allowed. Because to accept personal laws on the basis of religion and communities, is to violate human rights. Gender biased approach holding religious malpractices and emphasis on communal pride usually contradicts the freedom given by various Human Rights Charter to every human being in the world. The sensitive rights among these rights are right to life, liberty and equality.
4. Indian society from a long history has been considered to be patriarchal. The status of women had been considered low. Women are not given equal status as to the men. Their rights in civil matters were limited. If the provisions of UCC are applied in that case the women would get more rights. Only Uniform Civil Code can help in improving the position of women in India.
5. UCC is also a sign of progressive nation like India. A progressive nation aims at all around progress of the nation and does not include such policies that are not of divisible nature. It adopts such policies that unite the whole Nation in a single rope. If all the citizens are not given equal civil rights, in that case failure of government machinery occurs and that is a great loss to the administration of the nation. So, UCC can pave the way to sincere development of the country. A Uniform Civil Code will help our society in adopting modern values and in moving forward to become a developed nation.
6. The next necessity for UCC is that all Indians should be treated equally and without any bias on the basis of religion, gender or region. It is necessary also for the unity and integrity of the nation. Due to personal law, citizens living in the neighbourhood of other citizens are guided by two different laws. In some matters they are given equal treatment but in some matters they are treated differently. This kind of arrangement can only be ensured by implementing a UCC.
7. Democratic system ensures uniformity of laws and entitlement of equal rights for all its subjects and these values are the prerequisite of any secular democratic state. Article 44 of the Indian Constitution establishes that “The state shall Endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.” A true secularism in India can only be ensured by Uniform Civil Code. At the time of independence, some great leaders of this country have advised for UCC but at that time it was taken as a goal by the future Governments and was kept under the category of DPSP. The preamble of Constitution states that country to be a Secular Democratic Republic but the absence of Uniform Civil Code has prevented the same from taking place. India Still do not have a UCC despite the fact that we have a uniform Criminal Code which covers all citizens of India irrespective of their religion.
8. It is an illusion in the minds of some citizens that UCC is a try to tinker with the religious freedoms of the minorities, but that is absolutely false. It is the duty of the government to maintain the Civil rights of the citizens. Every citizen should be treated equally with the other citizen and not in an unequal manner on the basis of gender, religion etc. UCC is an instrument to regulate the Civil rights of the citizens and it does not oppose secularism. A UCC will bring uniformity in the status of people and set them equal in the eyes of law rather than being identified as from a religious majority or religious minority.

The only reason for discarding is the politics of pseudo-secularism in India. Despite being provisioned in the Article 15(1) of the Constitution of India which prohibits discrimination with the people on the basis of a religion. Indian governments have been giving special rights and privileges to minorities and discriminating against majorities.

The practice of pseudo-secularism has paralyzed the Indian system and is responsible for the division of the nation between two classes i.e., majority and minority. It has also promoted and ensured the implementation of discriminatory laws especially on gender basis and compelled successive governments in India to regulate minority appealing policies.

### **Impediments in Implementation of UCC:**

UCC is a sensitive and debated topic in India and it has attained the attention of politics and legal fraternity throughout the States. It has been a debated topic since independence. Some of our great leaders like Pandit Nehru and Doctor Ambedkar wanted its application from Independence but some of minority leaders were opposing its application since the formation of constituent assembly. Some of minority leaders have made accusations against others that they want to limit the personal rights of minorities by adopting uniform laws for all citizens. However, UCC is not to limit or to make interference in the personal matters of communities, but it is the method to regulate the Civil rights of citizens, so that the real secularism could be maintained in practice. Those who oppose UCC argue that religious matters are personal and divine in nature and the State has no right and power to interfere in it. They also argue that interference in these matters will lead to the enmity and fusion between different groups and communities in India. According to them, to apply UCC is also a violation of Article 29 and 30 of the Constitution of India as these Articles guarantee the right to follow own religion, custom and culture to the minorities. The major impediments against the implementation of UCC as follows:

1. India is a multicultural and multi religious country. These religions are practising from a long time in this country. People have become habitual to practices; they have followed them for a long time. Another reason is diversity, however to create unity in this diversity is not possible. In these conditions, blindly adopting and implementing a legal trajectory prevalent in the West is simply not possible because the social structure in western countries is not just similar to India. So, such a Code endangers the Identity of Muslim minorities as it seems to be favouring the majority population and more likely it will be a Uniform Hindu Code rather than to be a Uniform Civil Code. Thus, it is practically not possible to come up with a common Code to go on personalised affairs like marriage, divorce, inheritance, etc due to the immense cultural diversity of the country. Bringing people who are identified more as being members of different communities based on different religion, castes, regions and languages under the effect of one common law seems to be a tough task.
2. The Indian Constitution has declared this nation Secular, Democratic and Republic. The meaning of Secular State is that State shall not recognize one reason as one of its national religion but that does not mean that being a Secular State the State shall not regulate the Civil rights of the citizens. It is a wrong notion in the minds of citizens that UCC is a wrongful interference with the personal rights of minority communities. But, UCC in the real sense is to provide equal status to citizens irrespective of their gender, religion, region etc. It is generally understood that UCC is a move against secularism. It has been argued that imposing views of the majority community on the rest of the population consisting of several minorities will be nothing but injustice to minorities and especially with Muslims who are a considerable share of the total population of the country. The minorities of India are demanding for a country which respects diversity and distinct identities and such a Secular India was promised by the founders of the Indian Constitution when they were formulating the same. This is opined by the minorities that the respect of the emotions of the minority population shall be maintained by the government and decide on the violation of personal laws and implementation of UCC.
3. The other impediment in the way is that it is understood that UCC is encroachment on the freedom of religion. While that true notion is that it is justice with those who face biasness on the basis of

gender, religion and region. But, it is argued that Article 25 of the Constitution of India guarantees the liberty of conscience and free practise and propagation of religion and Article 26 of the Constitution of India provides the ability to maintain religious affairs. Whenever an attempt of formation of a UCC has been initiated, the entitlement made in the above to articles builds a defence against the application of such a Code. However, freedom is a fundamental right of citizens but on the other hand, the right to non-discrimination is also there. But a general assumption about UCC is that it stands against the right to religious freedom. Numerous communities in India, particularly the religious minorities perceive UCC as an incursion into their right to religious freedom. They are afraid that a common Civil Code will vanish away their cultural heritage and their traditions. They fear that UCC will impose laws influenced by the majority communities and mostly dictated.

4. It is also considered that implementing UCC will increase the interference of the State in the personal matters of the citizens. The personal matters are considered of divine nature and it is considered that the State cannot interfere in those matters. If UCC is applied in that case, the State shall have authority to manage the personal matters of the citizens. Such illusions are due to the fact that people do not categorise the personal laws and civil rights of the citizens. Marriage, inheritance and succession are in the category of civil rights and the government has a duty to manage all these rights of citizens. Thus, A UCC in its true spirit must be constituted by adopting most relevant and fair arrangements from different personal laws making imperceptible changes in each provision picked, ensuring judicial proclamation for gender equality and bringing in suitable interpretations on the Civil and personal affairs like marriage, divorce, succession, maintenance and adoption by granting privileges that each religious community secures from the other religious communities.
5. The other impediment in the implementation of UCC is that implementing UCC is a sensitive and tough task. Indian version of Secularism demands an inclusive approach by the State towards the diversity that exists in the country. Inclusion of all religious communities in the agenda of policy making and respect to their diverse beliefs and cultures has been in the intent of the Indian constitution since its enactment. Thus, UCC should be adopted considering all laws of different minority and majority communities, and should be the best suited arrangement from different personal laws. So, the government should be working in a more sensitive and impartial way on each stage while dealing with the issues of both majority and minority communities because the biased attitude or insensitive consideration of the personal law of any community may lead to the series consequences or may turned up into disastrous results in form of communal riots and violent protests. The realisation of UCC is quite a sensitive and tough task which requires a balanced and inclusive approach by the Government towards the religious beliefs of all communities in India.
6. The major opposition on the issue of implementing UCC in India has been received from the Muslim community. This conflict of ideologies has been overlapped by the events like controversies over beef, Love Jihad, school and college curriculum saffron sing and most prominently the silence received from the top leadership on these issues. An extremely relevant concern has been raised by the minorities in India that where does the government stand in deciding what laws need reformation and what laws will suitably constitute a skeleton of UCC. This is a real diligent question raised by the minorities. For the government to apply UCC nationwide is a tremendous job and seems difficult, because the acceptability of UCC is law. It seems that my minority will oppose the UCC with the louder. The major reason behind non-acceptance is that wrong notions have been put in their minds that it is wrongful interference with the personal matters on which the government has no right to interfere with. So, it is also an impediment because most of the people think that it is not the right time to apply UCC. However, time is not any criteria for the application of the UCC.
7. The other difficulty in implementation of UCC is that there is not any proposed draft ready. The content of UCC is missing and on that missing content the minorities are being misguided by their

leaders that UCC is imposing majority views and rules on them. Due to misinformation the implementation seems difficult. The minorities think their personal laws are divine and their abolishment is non-bearable to them. That is why it has become a difficult task for the Government to implement UCC nationwide.

These are some factors that create impediments in the way of implementation of UCC. There might be other social, educational, cultural and political impediments, but foremost of them have been discussed. The major impediment in the way of UCC is the misleading information among the citizens. They have been influenced by political leaders that if UCC is implemented, in that case majority rules or laws shall be made applicable on them.

### **Practices in Dispute:**

UCC aims at abandoning some practices directed by personal laws which are contrary to the Humanitarian Law. These practices are mostly the part of personal laws governing civil affairs of minority classes. But UCC is trying to filter the best among all the practices prevailing in personal laws. UCC is not the adoption of practices of a particular religious community but it tries to choose best among all religious community practices. The best suited amongst all shall be taken for UCC and the practices that are not fit for modern progressive society will be abandoned. Some of the practices in disputes or as follows:

#### **Talaq-e-Bidat:**

The Muslim personal law of India permits the practice of Talaq-e-Bidat or Talaq-e-Badai which includes Muslim man divorcing his wife by pronouncing more than one talaq in a single tuhr or in a tuhr after a coitus or pronouncing an irrevocable instantaneous divorce at one go. This practice of Talaq-e-Bidat which practically treats women like a chattel is neither harmonious with the modern principle of human rights and gender equality nor an integral part of Islamic faith according to various noted scholars. The practice also wrecks the life of many divorced women and their children, especially those belonging to the weaker economic sections of the society.

#### **Nikah-e-Halala:**

In a landmark judgement of Shah Bano Case of 1985, the Nikah-e-Halala was described as:

“Further once a woman has been divorced her husband is not permitted to take her as his wife even if he had pronounce Talaq under the influence of any intoxicant unless the woman undergoes Nikah-e-Halala which involves her marriage with another man who subsequently divorce her so that her previous husband can remarry her.”

The actual purpose behind this practice of Nikah-e-Halala was to make it hard for the impulsive man who pronounces Talaq for an irrelevant reason to get his wife back into marriage with him. Thus, the purpose stipulated for Nikah-e-Halala must be followed without any pre-design. However, fairly recent incidents have come to light unveiling the physical, psychological and financial exploitation of women in the name of halala. This is done in the form of what is termed as a Halala fixing, whereby another man agrees to marry the woman, consummate the marriage and then divorce her. Such postulation of the practice of Nikah-e-Halala has placed it into the category of one of the most heinous crimes under IPC i.e., Rape, wherein the distraught women submits her body to be used as a play thing merely to pay for the thoughtless pronouncement of talaq by her husband. The implementation of UCC will eliminate the conduct of these and so many other practices as these are found to be violative to women's rights and promote gender equality within a particular community. As the Constitution of India guarantees the right

to equality for everyone and any practice promoting discrimination on any basis in the name of religion cannot be permitted and legalised.

### **Conclusion:**

UCC is expected to promote virtues like equality and egalitarianism. It is also expected that real Secularism will be established after implementation of UCC. It is also expected that UCC will bring unity and integrity to the nation. However, both arguments in favour and against a relevant but implementation of UCC in a real sense will bring harmony among the communities which is the route of the nationwide progress. The position of women in India is ridiculous due to the absolute orthodox cultures prevailing in some religious communities. UCC will change the position of women in the society. Women empowerment in a real sense would be possible only after the implementation of UCC. It has been argued by the supporters of the UCC that different personal laws for different communities created an unnecessary burden on the legal system and caused a kind of confusion for the judiciary. This confusion and burden can be reduced only by the implementation of UCC. UCC will also address the loopholes in the personal laws and will be a major instrument towards the elimination of gender injustice especially for the women of Muslim community. It is considered that most of the personal laws have biased arrangements towards the status of women and it can be improved only by application of UCC. If all Indians have the same laws governing them, then the politician will have no chance of exploiting any community in the exchange of their votes. It will not only raise the bar of the legal system but also helps in the progress of India as the nation. Seeing all these aspects it can be said that the country is in dire need of the UCC. It will eliminate the injustice prevalent in many kinds. On the other hand, there are also some hardships in the implementation. Foremost of them is misinformation among minorities that majority laws are being imposed upon them but this is not true at all. However the educated citizens are favouring the implementation, advertising some illusions that leaders of minorities are spreading such information. They do not want reform in the personal laws of the community. But this is the right time to bring your UCC and uproot the injustice based on religion, gender and region etc.