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Uniform Civil Code: Perspective Difference between Nehru and Ambedkar

Mahendra Kumar Meena

Lecturer, Dept. of Political Science, Shri Govind Guru Govt. College, Banswara, Rajasthan, India

ABSTRACT: During the debates in the Constituent Assembly, B.R. Ambedkar had demonstrated his will to reform Indian society by recommending the adoption of a Civil Code of western inspiration. He had then opposed the delegates who wished to immortalize personal laws, especially Muslim representatives who showed themselves very attached to the Shariat: "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." India's first PM Jawaharlal Nehru professed his keen desire to have a Uniform Civil Code (UCC), but though he succeeded in codifying Hindu law, his government took no step towards reform of Muslim personal laws and sidestepped the question of a common code altogether.

When Dr B R Ambedkar asked the Constituent Assembly to adopt a uniform code, its Muslim members staunchly opposed it, so all he got in the Constitution was Article 44 in the Directive Principles that said 'the State shall endeavour to secure for the citizens a uniform civil code.'

KEYWORDS: UCC, Nehru, Ambedkar, muslim, liberty, security, fundamental, constituent, assembly

I. INTRODUCTION

Dr Ambedkar's thoughts on gender justice: Decoding the uniform civil code" at Dr Ambedkar International Centre, Pandit asked, "We have a common criminal code, then why not a uniform civil code? We don't punish people according to their religious law, so why is the UCC being contested to such an extent?" While emphasising on the need to discuss and debate the issue nationally to pave the way for UCC, she highlighted that "uniformity of laws is meant to make people progressive". Most people think that former prime minister Rajiv Gandhi is the author of reversing and thwarting the process of reform of Muslim Personal Law by using his brute majority in Parliament to pass the Muslim Women's Protection Act of 1986 which arrogantly overrode the Supreme Court judgement in the Shah Bano case. But Rajiv Gandhi was neither the first nor the last prime minister to have polarised India on communal lines through ill-advised political interventions. The mess started with the doyen of secularism, Jawaharlal Nehru himself. It defies comprehension why in the very first decade after independence, Nehru chose to put the entire weight of his government in pushing through "reforming" only Hindu customary laws on the basis of poorly understood and half-baked knowledge derived from our erstwhile colonial rulers of what constituted Hindu customs while refusing to touch Muslim or Christian personal laws. During 1948-51 and 1951-54, Jawaharlal Nehru and BR Ambedkar tried relentlessly to push for a Uniform Civil Code in the country. Ironically, today, the Congress party in no unequivocal terms has shunned the Nehruvian and Ambedkarite vision. The Congress party has staunchly resisted this vision, which attempted to move the nation together towards an equal, equitable, just and secular society.

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Needless to say, a temporary and futuristic debate on the Article 44, which made Uniform Civil Code a directive principle then, was never discussed by the Congress party even while it enjoyed power at the Centre for the longest time. In 2014, Narendra Modi made a poll promise. On behalf of the BJP, he vowed to implement the Uniform Civil Code. Taking a committed step towards realising this vision, the Modi government has requested the Law Commission of India to lend its views on the deeply controversial issue. Not only has the government chosen to bell the cat, but also showcased its deepest and sincere commitments towards the Constitution of the India, rooted in the social vision of Ambedkar. Under the Uniform Civil Code, all personal religious laws in the country covering matters like marriage, divorce, property rights, inheritance and maintenance will be brought under a secular umbrella in a unified way. The code will be binding on each and every citizen of the country, irrespective of the religious community he/she belongs to. It leaves the rituals and day-to-day practices of faith and rites outside the purview of its sight, but ensures that civil matters affecting Constitutional rights pertaining to equality, freedom, choice, protection against exploitation and claims of ownership are duly considered. Goa, a BJP-governed state, consisting of 25 per cent Christian population has adopted the Goa Civil Code or the Goa Family Law binding. Notwithstanding the need for change involving certain regressive clauses, Goa has shown a way towards creating a more egalitarian society.

The uniform code has been possible and sustainable without any threat to the identity of "minorities". The secularism in the idea that is Uniform Civil Code must be acknowledged and understood in totality before jumping to the politically motivated and managed debates around the issue. The Westphalian idea of secularism separates the Church from the State. This separation was made to ensure that there is freedom to follow one's religion (they called it "faith") and that the State does not institutionalise corruption within religion - religion being a very personal connection (therefore, the usage of the word "faith" earlier) between God and man, something intrinsic to individual liberty. The Indian version of secularism, in essence, adopts the intention of the Westphalian concept while tailor-making the nuances to be able to fit diversity, unity and equality together. This is important considering India, unlike the West, is a very plural and very diverse society in terms of the practice of various faiths. Therefore, the Uniform Civil Code is necessary to protect and conserve this unique diversity against exploitation - political, social and civil. Instead of the state discussing religious matters within and through the judiciary, a Uniform Civil Code will divest the state from faith-related concerns and limit its control to civil matters involving issues of rights, inheritance, protection and equality.

II. DISCUSSION

Will Uniform Civil Code be another trump card of the saffron brigade to further strengthen its narrative before the General Election 2024? As it may be used as a whip to beat the Muslim community, will the community bite the bullet or will the Islamic clerics sway them away?

When the BJP MP Kirodi Lal Meena introduced a private member's Bill in Rajya Sabha, seeking the constitution of a committee to prepare and implement a Uniform Civil Code (UCC) in the country, the opposition was up in arms.

Members from the Congress, TMC, DMK, NCP, CPI(M), CPI, IUML, MDMK and RJD lodged strong protests against the move.

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Some political observers pointed out that the ruling party was behind the move and the private member bill was introduced to test the waters before taking a plunge into the contention issue.

Many people may be surprised to know that it was the Congress and its stalwart Jawahar Lal Nehru who tried to introduce the UCC for the first time in 1954. As the Parliament discussed the report of the Hindu law committee during the 1948–1951 and 1951–1954 sessions, Nehru, his supporters and women members realised that the orthodox Hindu laws were supportive of women's rights since monogamy, divorce and the widow's right to inherit property were in the shastras.

Law Minister BR Ambedkar recommended a Uniform Civil Code as he thought that this would reform the Hindu society and also ensure protection to the Muslim women who have little protection under the dogmatic Sharia laws.

Almost all sections of the society, Orthodox Muslims and Hindus alike opposed the Uniform Civil Code. Ambedkar introduced a Hindu Bill to ensure modern reformation of Hindu Society. But, it too came under scathing attacks.

Later, four separate acts, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act were enacted in 1956.

UCC is meant to replace the Hindu Marriage Act, Hindu Succession Act, Indian Christian Marriages Act, Indian Divorce Act, Parsi Marriage and Divorce Act.

The proposals in UCC include monogamy, equal rights for son and daughter over inheritance of paternal property and gender & religion neutral laws in regards of will, charity, divinity, guardianship and sharing of custody.

All India Muslim Personal Law Board has rejected the UCC and called it unconstitutional and against the Muslims.

But there are serious contradictions in the civil code and many Hindu sects and communities may not accept it. There are Anand Marriage Act, Arya Samaj Marriage, Special Marriage Act, Foreign Marriage Act and Krishna Marriage Act. Similarly we have the Indian Divorce Act, Madras Aliya Sanatan Act, Madras Namboodiripad Act, Madras Makkathiyam Act as well. Will the UCC address these laws?

The most complicated and controversial parts belong to the right of inheritance and division of property. Hindus have two codes for division of property.

Dayabhag was prevalent in West Bengal, Odisha and Assam. It allows daughters equal rights in father's property.

The Mitakshara system was prevalent in Mithila of Bihar, Mayurva of Maharashtra, Dravida of Tamilnadu and Benaras of Uttar Pradesh. The Mitakshara system was not abolished, but it was diluted and daughters were given equal rights by adopting certain laws.

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In Sharia law, sons are allowed to get property twice as much as their sisters. If the wife has children, she is entitled to get one-eighth of husband's property, otherwise, she will get one fourth. If there are more than one wife, one-eighth of the property will be distributed among them.

Will the Uniform Civil Code address these issues? Will registration of marriage be made mandatory?

There are certain issues which Muslims should ponder instead of opposing the UCC under provocation of ulemas.

UCC will ensure that childless Muslim widows get share in their husband's property. It will ensure that she is not driven back to her parents' house after the death of her husband.

Similarly, a husband will think twice before divorcing his wife if he has to share his property with her.

Political analysts feel that the Universal Civil Code is aimed at appeasing the majority Hindus and assure them that no special privilege is given to Muslims.

Hindus have been made to believe that they are under threat and also that Muslims have been treated with velvet gloves and given special treatment. BJP wants to correct this anomaly and there will be one law for every citizen irrespective of their religion.

Abolition of triple talaq, abrogation of Article 370 and now Universal Civil Code. The saffron party is ready with its juggernaut before the Lok Sabha Election 2024.

III. RESULTS

The UCC is intended to replace the many, conflicting laws that are already in force and applied to various communities. These laws include the Parsi Marriage and Divorce Act as well as the Hindu Marriage Act, Hindu Succession Act, Indian Christian Marriages Act, and Indian Divorce Act. Implementation Of The Uniform Civil Code, 10 Lakh Jobs In The Manufacturing Sector, And A State Capital Region Tag For Bengaluru Are Among The Top Promises Made By The BJP In Its Manifesto For The May 10 Karnataka Assembly Election.

Uniform Civil Code (UCC)

- A Uniform Civil Code Means That All Sections Of 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 Succession Of The Property. It Is Based On The Premise That There Is No Connection Between Religion And Law In Modern Civilization.

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Reference To UCC In Indian Constitution

- Article 44 Corresponds With Directive Principles Of State Policy Stating That The State Shall Endeavour To Provide For Its Citizens A Uniform Civil Code (UCC) Throughout The Territory Of India.

Issue Of UCC – Before 1947

- The Lex Loci Report Of October 1840 Stressed The Importance And Necessity Of Uniformity In The Codification Of Indian Law, Relating To Crimes, Evidence, And Contracts.
- But It Also Recommended That The Personal Laws Of Hindus And Muslims Should Be Kept Outside Such Codification.
- The Queen’s 1859 Proclamation Promised Absolute Non-Interference In Religious Matters.

Issue Of UCC – Post-1947

- Jawaharlal Nehru And Dr. B.R Ambedkar Pushed For A Uniform Civil Code. However, They Included The UCC In The Directive Principles Of State Policy (DPSP, Article 44) Mainly Due To Opposition From Religious Fundamentalists And A Lack Of Awareness Among The Masses During The Time.

Landmark Reforms & SC Judgements Regarding UCC

- The Hindu Code Bill Of 1955
- The Hindu Marriage Act
- Minority And Guardianship Act
- Adoptions And Maintenance Act
- Special Marriage Act
- Shah Bano Case
- Sarla Mudgal Case








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Issues Associated With UCC:

ARGUMENTS IN FAVOR OF UCC

 <p>IT WILL INTEGRATE INDIA</p> <p>It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct.</p>	 <p>WILL HELP IN REDUCING VOTE BANK POLITICS</p> <p>A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election.</p>	 <p>PERSONAL LAWS ARE A LOOP HOLE</p> <p>By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that.</p>
 <p>SIGN OF MODERN PROGRESSIVE NATION</p> <p>It will help the society move forward and take India towards its goal of becoming a developed nation.</p>	 <p>MORE RIGHTS TO THE WOMEN</p> <p>A uniform civil code will also help in improving the condition of women in India.</p>	 <p>ALL INDIANS SHOULD BE TREATED SAME</p> <p>All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians.</p>
 <p>IT PROMOTES REAL SECULARISM</p> <p>A uniform civil code doesn't mean it will limit the freedom of people to follow their religion, it just means that every person will be treated the same.</p>	<p>Many provisions of personnel laws violate human rights</p> <p>Article 25 and 26 guarantee freedom of religion and UCC is not opposed to secularism.</p>	<p>The codification and unification of the variegated personal laws will produce a more coherent system of laws. This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.</p>

CHALLENGES

<p>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.</p>	<p>Misinformation about UCC - Content of UCC has not been spelt out leading minorities to believe that it is a way of Hinduise them.</p>	<p>Some sections in Minorities claim it is a way of imposing majority views on them.</p>
<p>Lack of political will due to the complexity and sensitivity of the issue.</p>	<p>Change in laws in favour of women like Hindu inheritance Act has neither brought about any change in the percentage of property held by women nor in their status.</p>	<p>Different religious communities have different personal laws which lead to politicization.</p>

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SUGGESTIONS

In order to promote the spirit of uniformity of laws and accomplish the objectives enshrined in Art.44 of the Constitution, the following suggestions need immediate consideration.

<p>A progressive and broadminded outlook is needed among the people to understand the spirit of such code. For this, education, awareness and sensitisation programmes must be taken up.</p>	<p>The Uniform Civil Code should act in the best interest of all the religions.</p>
<p>A committee of eminent jurists should be considered to maintain uniformity and care must be taken not to hurt the sentiments of any particular community.</p>	<p>The matter being sensitive in nature, its always better if the initiative comes from the religious groups concerned.</p>

III. CONCLUSIONS

Was Article 44 Of The Indian Constitution Necessary

This Article was drafted to bring all communities together by establishing a common position on issues that are currently governed by disparate personal laws. It is based on the idea that there is no fundamental connection between religion and personal law in a civilized society.

Article 44 of the Indian constitution is necessary to overcome discrimination against vulnerable people and bring together various cultural groups nationwide.

What is the Uniform Civil Code (UCC) According to the Article 44

Regardless of a person's faith, caste, ethnicity, etc., the UCC refers to a unified code or rule for all citizens. All personal laws of India are to be replaced by the UCC. It falls under the state's Directive Principles, hence it is neither a fundamental right nor is it protected by the Constitution. It is merely an objective or standard that a country needs to pursue.

Personal laws usually concentrate on the following:

1. marriage and divorce

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2. custody and guardianship
3. adoption and maintenance
4. succession and inheritance

Origin and History of Uniform Civil Code

The UCC has its roots in colonial India, a time when British Rule dominated the nation.

Pre-Independence (Colonial Era- 1858-1947)

1. The East India Company (1757–1858) attempted to alter Indian social and religious norms before the arrival of the British rulers by imposing Western beliefs on the country.
2. The Lex Loci Report highlighted the demand for homogeneity in the formulation of Indian law in October 1840 about crimes, evidence, and contracts but suggested that the personal laws of Hindus and Muslims be kept apart from such codification.
3. The Queen’s Proclamation of 1859 guaranteed complete non-interference in issues of religion.

Due to this, criminal laws were made uniform for the whole nation, but personal laws were regulated separately by various communities.

Era After Colonization (1947-1985)

1. In 1948–1951 and the 1951–1954 sessions, the Indian Parliament debated the Hindu law committee’s report. A uniform civil code was what Jawaharlal Nehru, the nation’s first prime minister, along with his followers and female members, pushed for.
2. A uniform civil code was a demand made during the constitution’s development by well-known figures like Jawaharlal Nehru and Dr. B.R. Ambedkar. But because of resistance from religious conservatives and a general lack of awareness at the time, they decided to incorporate the UCC in the Directive Principles of State Policy (DPSP, Article 44).

These were a few of the reforms at this time:

The Hindu Code Bill was created by Dr. B. R. Ambedkar to update Hindu law, which prohibited polygamy, legalized divorce, and granted daughters the right to inherit property. Despite strong opposition, a toned-down version of the legislation was enacted through four distinct statutes.

Succession Act, at first, Daughters were not granted any entitlement to inherited property under the Hindu Succession Act of 1956. Only a single Hindu household may grant them a right to livelihood. However, an addition to the Act on September 9, 2005, erased this distinction.

In 1956 a new bill was passed with four different reforms:

The Hindu Marriage Act

Minority and Guardianship Act

Adoptions and Maintenance Act

Special Marriage Act which allowed Indians to have Civil Marriage.

Uniform Civil Code in India

In India, the Uniform Civil Code (UCC) aims to replace the personal rules derived from the scriptures and traditions of each significant religious group with a collection of laws that apply to all citizens equally.

Ahmed Khan V. Shah Bano Begum Case (1985)

In 1985 a 73-year-old woman, Shah Bano asked her husband Muhammad Ahmad Khan for maintenance who divorced her after 40 years of marriage by triple Talaq (saying “I divorce thee” three times) and denied paying her maintenance. The District Court and the High Court found it in her favor after she filed a legal claim. Then,

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according to her husband, he had finished all of his obligations under Islamic law to the Muslim community and had appealed the decision to the Supreme Court.

The “maintenance of wives, children, and parents” clause (Section 125) of the All-India Criminal Code was upheld by the Supreme Court in 1985 and applied to all citizens, regardless of religion. It also advocated for the creation of a uniform civil code.

The case’s specifics:

1. Muslim personal law only required maintenance to be paid up until the moment of iddat (three lunar months-roughly 90 days).
2. Section 125 of the Criminal Procedure Code (CrPC), which applied to all citizens, stipulated that the wife was entitled to maintenance.

After the passage of the Muslim Women’s (Protection of Rights on Divorce) Act in 1986, Muslim women were exempt from Section 125 of the Criminal Procedure Code.

Does India need to implement UCC

This topic has been under discussion for many years. Yes, India needs UCC due to the promotion of casteism and customary practices by various personal laws, which leads to gender prejudice among followers of different religions. Since almost all personal laws are founded on very ancient scriptures and religious texts and permit these ancient norms to manage family life, personal laws are discriminatory. Debates and Arguments Related to Uniform Civil Code

Against

1. The entire idea of incorporating all personal laws into one uniform code will violate the fundamental rights of personal laws for the majority of minority religions,
2. It is fairly absurd to assume people from different cultures and traditions abide by the same law based on a consistent system in India, a nation with a wide variety of languages and customs.

Favor

1. many social reformers argued in the favor of UCC
2. To guarantee all the citizens the equal status
3. to improve gender equality
4. to promote national unity

Challenges Faced During Implementation of the Uniform Civil Code

1. Many religious groups opposed UCC, and even in the twenty-first century, it appears that fundamentalism, which is deeply ingrained in many of India’s religious practices, is still a problem.
2. It is incredibly challenging to attain any kind of uniformity and common code because of the personal laws with immense variation and passionate devotion.
3. The true meaning of the uniform civil code is still unclear to many individuals. It continues to be the subject of misleading perceptions, particularly among minorities like the Muslim Community, and the Naga Community, which makes it challenging to have an informed discussion about its implementation.
4. Many communities, especially minority ones, believe that the Uniform Civil Code infringes upon their freedom of religion.

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Summing Up

Article 44 is one of the Directive Principles of State Policy (DPSP) which stipulates that the state shall make every effort to provide a UCC for the residents throughout the entirety of India. UCC is a proposal to implement All religious communities are subject to one nation, one rule.

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