



Article 44 of Indian Constitution: Debates and Challenges

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Abstract

Article 44 of the Indian Constitution states that “the State shall endeavour to secure for the citizens a uniform civil code (UCC) throughout the territory of India.” The desirability of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice.

After the revocation of Article 370, the central family law Acts were extended to Jammu and Kashmir. Although, this is another step towards implementing UCC throughout India, still a long distance is to be covered in this pursuit.

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Key Words : Article 44, UCC, Uniform civil code

Introduction

The Uniform Civil Code (UCC) calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under Article 44 of the Constitution, which lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

Uniform Civil Code



To define democracy, one must define the ideals, “principles, and institutions of a political system in which the people rule themselves. Public reasons for obeying laws and regulations and for coordinating with other citizens via the institutions they possess are provided by an idea of democracy, which is both part of a democratic culture and a topic of political debate. But beyond this conservative, stabilizing function, a vision of democracy also offers a crucial yardstick of legitimacy against which people may measure the quality of their own political institutions and a restraining ideal to guide attempts at institutional innovation and political change. In the modern day, ideas of democracy mostly exist in the theoretical domain.

A Uniform Civil Code administers the same set of secular civil laws to govern all people irrespective of their religion, caste and tribe. The need for such a code takes in to account the constitutional mandate of securing justice and equality for all citizens. A uniform criminal code is applicable to all citizens irrespective of religion, caste, gender and domicile in our country. But a similar code pertaining to marriage, divorce, succession and other family matters has not been brought in to effect. The personal laws vary widely in their sources, philosophy and application. Therefore, there is an inherent difficulty and resistance in bringing people together and unifying those when different religions and personal laws govern them.

Article 35 of the draft Constitution of India was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as article 44. It was incorporated in the Constitution as an aspect which would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

The object of the code has been defined by the Supreme Court as to effect an integration of India by bringing all communities on a common platform on matters which are presently governed by diverse personal laws but which do not form the essence of any religion.

British India (1858-1947)

The debate for a uniform civil code dates back to the colonial period in India. Prior to the British Raj, under the East India Company (1757-1858), they tried to reform local social and religious customs. Lord William Bentinck, the Governor-General of India, tried to suppress sati, the prescribed death of a widow on her husband's funeral pyre, and passed the Bengal Sati Regulation, 1829. This was later extended outside Bengal to all English territories in India.



The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification.

The Muslim Personal law (based on Sharia law), was not strictly enforced as compared to the Hindu law. It had no uniformity in its application at lower courts and was severely restricted because of bureaucratic procedures.

Post Colonial Era (1947-1985) : The Hindu Code Bill and DPSP

The Indian Parliament discussed the report of the Hindu law committee during the 1948–1951 and 1951–1954 sessions. The first Prime Minister of the Indian republic, Jawaharlal Nehru, his supporters and women members wanted a uniform civil code to be implemented.

As Law Minister, B. R. Ambedkar was in charge of presenting the details of this bill. It was found that the orthodox Hindu laws were pertaining only to a specific school and tradition because monogamy, divorce and the widow's right to inherit property were present in the Shashtras. Ambedkar recommended the adoption of a Uniform Civil Code. Nehru later supported Ambedkar's reforms but did not share his negative view on Hindu society.

The Hindu bill itself received much criticism and the main provisions opposed were those concerning monogamy, divorce, abolition of coparcenaries (women inheriting a shared title) and inheritance to daughters. The first President of the country, Rajendra Prasad, opposed these reforms; others included the Congress party president Vallabhbhai Patel, a few senior members and the Hindu fundamentalist parties. The fundamentalists called it "anti-Hindu" and "anti-Indian"; as a delaying tactic, they demanded a Uniform Civil Code.[5]

Thus, a lesser version of this bill was passed by the parliament in 1956, in the form of four separate acts, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act etc.

An objection was taken to this provision in the Constituent Assembly by several Muslim members who apprehended that their personal law might be abrogated. This objection was met by pointing out:

- 1) that India had already achieved a uniformity of law over a vast area; 2) that though there was diversity in personal laws, there was nothing sacrosanct about them; 3) the secular activities, such as, inheritance, covered by personal laws should be separated from religion; 4)



that a uniform law applicable to all would promote national unity; and 5) that no legislature would forcibly amend any personal law in future if people were opposed to it.[6]

The Special Marriage Act, 1954, provides a form of civil marriage to any citizen irrespective of religion, thus permitting any Indian to have their marriage outside the realm of any specific religious personal law.

Article 44: View of the makers:

K.M. Munshi took a very rigid view in negating the claims of majoritarian over sweep over the minorities. He states, “We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand?”[7]

Shri Alladi Krishnaswamy Ayyar gives a much more realistic reason to aim for a UCC and bases his argument on the fallacy of having strict water tight existence of the communities.[8]

B. R. Ambedkar was also a staunch supporter of the UCC. He denied the claims that a common civil code in a vast country, like India, would be impossibility. He stated that the only sphere which did not have a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, Easement Act, Sale of Goods etc. were uniform in nature.[9]

The Constituent Assembly Debates around the UCC and the erstwhile article 35 had a lot of dissent towards it. The issue of dominance by the majority communities was the main bone of contention.

Judicial Perspective on Article 44:

Although Supreme Court had assumed the role of a social reformer in many other previous cases,[10]but it was the Shah Bano’s case[11]usurped a landmark position in the history of debates on religion, secularism and the rights of women. If we carefully sidestep the political drama that later unfolded, we would be able to trace the problems the courts of our country have been facing due to the separate conflicting personal laws.



The SC has emphasized that steps be initiated to enact a UCC. In *Ms. Jordan Deingdeh v. S.S. Chopra*[12], the Court said that the time has now come for a complete reform of the law of marriage and make a UCC for the country.

In *Shah Bano's* case the court has elucidated that 'a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.' V. R. Krishna Iyer J. who is known to have given a scintillating judgment in *Bai Tahira v. Ali Hussain Fissalli Chowthia*[13] also has an Ambedkarian view point on common civil code. Instead of being a majoritarian undertaking, the common code is supposed to be a collection of the best from every system of personal laws.

How can the Supreme Court declare one practice as unconstitutional and violative of human dignity for one section of women but let it remain constitutional for another section of women since their personal laws allow it to be so? In the case of *State of Bombay v. Narasu Appa Mali*[14], the Supreme Court was to face with such a situation.

In *Sarla Mudgal v. UOI*[15], the SC has directed the Prime Minister to take a fresh look at Art. 44 of the Constitution which enjoins the State to secure a UCC which accordingly to the Court is imperative for both the oppressed and promotion of national unity and integrity. But in *Lily Thomas v. UOI*[16], SC clarified the remarks made by it in earlier *Sarla Mudgal* case and asserted that it has not issued any direction in that case for the enactment of UCC.

In *Danial Latifi v Union of India*[17], a five judge constitutional bench upheld the validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986; that was passed after huge hue and cry in *Shah Bano's* Case.

In *John Vallamatton v. UOI*[18], a three judge bench of the SC has once again expressed its regret for non- enactment of Common Civil Code. It was said that Article 44 is based on the premise that there is no necessary connection between religion and personal law in a civilized society.



All marriages must be registered : First step towards UCC – In Seema v. Ashwani Kumar[19], the SC has held that all marriages, irrespective of their religion, be compulsorily registered.#

Conclusion

The object behind Article 44 is to effect an integration of India by bringing all communities on a common platform on matters which are presently governed by diverse personal laws but which do not form the essence of any religion. It is hoped that despite the odds stacked against it, the uniform civil code will one day become a reality. It is also heartening to see that the plea for a uniform civil code rests these days more on contentions related to gender bias and harassment rather than theological considerations.

It solely depends on prudent citizens to think and act logically and not under blank influence of some politically run propagandas. In the end, UCC is a directive that needs to get attained for a Welfare State like India, that writes on a board of religiously diverse canvass with ink of Secularism, till then it remains a 'Dead Letter'. -Vanshika Sharma

References :

1. Granville Austin, The Indian Constitution, pp.50-52
2. Preamble to the Constitution of India
3. Remarks to the National Association of Evangelicals in Chicago, Illinois, from March 3, 1992.
4. 1 Lord Alfred Tennyson in his poem Love Thou Thy Land, With Love Far Brought, first published in 1842.
5. Chavan & Kidwai 2006, pp. 83–86.
6. VII CAD 540-2
7. Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948
8. Ibid
9. Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948
10. Fazlunbi v. Khader Ali, 1980 SCR (3)1127.
11. Mohd. Ahmed Khan v. Shah Bano Begum (1985) 3 SCR 844



12. AIR 1985 SC 934
13. AIR 1979 SC 362
14. Fung, A. (2012). Continuous institutional innovation and the pragmatic conception of democracy. *Polity*, 44(4), 609–624. <https://doi.org/10.1057/pol.2012.17>
15. Heller, P. (2012). Democracy, participatory politics and development: Some comparative lessons from Brazil, India and South Africa. *Polity*, 44(4), 643–665. <https://doi.org/10.1057/pol.2012.19>
16. Kuper, A. (2003). CA forum on anthropology in public: The return of the native. *Current Anthropology*, 44(3), 389–402. <https://doi.org/10.1086/368120>
17. Nussbaum, M. C. (2004). *Martha C. Nussbaum Women's Education: A Global Challenge*. 29(2).
18. Pande, A. (2010). Commercial surrogacy in India: Manufacturing a perfect mother-worker. *Signs*, 35(4), 969–992. <https://doi.org/10.1086/651043>
19. Sharma, H. (2018). Are we being trained to discriminate? Need to sensitize doctors in India on issues of gender and sexuality. *RHiME*, 5(September), 35–43.
20. Wing, S. (2012). Human Rights Based Approaches to Development: Justice and Legal Fiction in Africa. *SSRN Electronic Journal*, January. <https://doi.org/10.2139/ssrn.1914599>