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# Uniform Civil Code (UCC) in India: An overview

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*The lack of a Uniform Civil Code in India is undercutting the chances of an overall development of the Indian society*



ARTICLE 44 CONSTITUTION OF INDIA

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As per the recent Allahabad High Court judgement that states that the Uniform Civil Code (UCC) is a necessity and mandatorily required, there is a need to understand the phenomenon of the UCC in India. The question that arises is, how did the concept of UCC come into being? What were the steps taken in the post-Independence period to bring the UCC about? What is the jurisprudence of the case laws on the issue? What lies behind the current government's failure to implement it, and what is the possible way forward? It is under Article 44 of the Constitution that declares that the state shall endeavour to secure the citizens a uniform civil code. This article finds a place under Part IV of the Constitution that deals with Directive Principles of State Policy, which are not enforceable in 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 law-making. The significance attached to the directive principles was recognised in the *Minerva Mills* versus Union of India case, where the Supreme Court held that the fundamental rights must be harmonised with the directive principles and such harmony is one of the basic features of the Constitution.

Historically, the idea of UCC was influenced by similar codes drafted in European countries during the 19<sup>th</sup> century and early 20<sup>th</sup> century, and in particular the French code of 1804 that had eradicated all forms of customary or statutory laws prevailing at that time and replaced it with a uniform code. On a larger level, it was an attempt to 'civilise' the nation as part of a larger colonial project following the West. However, the First War of Indian Independence in 1857 sent a strong signal to the British to not alter the social fabric of India and respect the personal codes governing aspects of marriage, divorce, maintenance, adoption, and succession.

Post-Independence, against the backdrop of Partition, which resulted in communal disharmony and resistance to remove personal laws resulted in accommodating the UCC as a directive principle as discussed above. Although, the writers of the Constitution attempted to bring a Hindu Code Bill in the Parliament that included progressive measures like women's equal rights of inheritance, unfortunately, it could not see the light of the day. It was only on 5<sup>th</sup> September 2005, when the *Hindu Succession (Amendment) Act, 2005* received assent from the President of India that the discriminatory provisions regarding property rights in the *Hindu Succession Act, 1956* were removed.

**The Government needs to think how to ensure the overall development of the society including women by bringing in a UCC and how to balance the aims of Article 51 A (f) and Article 51 A(e) of the Constitution that deals with the aspects of valuing and preserving the rich heritage of composite culture and renouncing practices that are derogatory to the dignity of women respectively.**

In this light, from a judicial perspective, the Supreme Court has emphasised the importance of having a UCC in several cases that needs to be analysed, starting from the *Shah Bano Begum* case to the recent *Shayara Bano* versus Union of India case that questioned the legitimacy of the practice of *talaq-e-bidat* (triple talaq) and declared it unconstitutional.

Beginning with the *Mohd. Ahmed Khan v. Shah Bano Begum* and others case, the Supreme Court dealt with the issue of maintenance under *Section 125* of the Code of Criminal Procedure after *Shah Bano's* husband pronounced talaq against her. While ruling on the case, Chief Justice YV Chandrachud observed that the Parliament should outline the contours of a common civil code as it is an instrument that facilitates national harmony and equality before law. Despite this, the government did not address the issue and brought forth the *Muslim Women's Protection of Rights on Divorce Act* in 1986.

For the next decade, there was silence about the issue but then came the case of *Sarla Mudgal, President, Kalyani, and others* versus Union of India and others, where the Supreme Court urged the government to secure a Uniform Civil Code based on the model of the Hindu code to protect the abused and achieving national solidarity. In a similar vein, the cases of *Lily Thomas* versus Union of India and *ABC v. The State (NCT of Delhi)* were dealt with. While in the former, the Supreme Court emphasised the significance of UCC in terms of succession, and in the latter, it held that a single mother of the Christian religion was eligible to apply for sole guardianship of her child without the assent of the natural father under the *Guardian and Wards Act, 1890* that had not recognised the right of Christian single mothers. In this context, the court pointed out the inconvenience caused in absence of a uniform civil code.

Cut to the present, the *Bhartiya Janata Party (BJP)*, which has been in power since 2014 had stated in its general election manifesto that, "BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonising them with the modern times."

In practice, this has not been the case and as the current government brings measures like increasing the age of girl child to 21 for marriage which is a laudable step to ensure gender equality, it needs to think how to ensure the overall development of the society including women by bringing in a UCC and how to balance the aims of *Article 51 A (f)* and *Article 51 A(e)* of the Constitution that deals with the aspects of valuing and preserving the rich heritage of composite culture and renouncing practices that are derogatory to the dignity of women respectively.

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