

# Uniform Civil Code: A Rationale for Enactment

**Dr. Uma Begam**

Assistant Professor, Dept. of Political Science, MMD College, Sabroom, Tripura, India

## Abstract

With a statesmanlike wisdom, Dr. B.R.Ambedkar (1891-1956 AD) along with several other framers of the Constitution of India, have left an important Directive Principle in Article 44; it reads thus: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” This Directive Principle had its supporters and opponents. The opponents opposed on ground of infringement of personal laws and religion. The supporters argued: in a civilized society personal law and religion are separable; and during the British period a good number of Acts have been enacted in the shape of uniform laws. This paper provides additional arguments for a uniform civil code.

**Keywords:** Constitution, Directive Principle, Civil Code, Court case, Public opinion, U.N.Convention, Global warming, Victorian reformatory spirit, French Revolution.

During the previous centuries, the form of native government was, several times, violently altered.<sup>1</sup> Behind the welter of bloodshed, mutiny and reforms, a national state had been slowly built up. Three strains of thought: ancient Indian political thought, Victorian reformatory spirit, the French revolution were the triple aspects of the evolution of a single national life. At last India came to the threshold of Independence.

The first meeting of the Constituent Assembly of India was held on Monday, 9<sup>th</sup> December 1946 in New Delhi.<sup>2</sup> After a long-complicated process of drafting, debates and discussion, the new constitution was prepared in November 1949. Article 44 of the Constitution was one of the bones of contention. It sought for a uniform civil code.

During the formative period (1946-1949) the proposal for a uniform civil code evoked a lot of hot discussion. The opponents had it to say that a uniform civil code would encroach, trespass and infringe upon the fundamental rights and religious matters of the Muslims.<sup>3</sup>

The sensation thus created in the country was forgotten for more than three decades. But a court case in 1985 brought the issue again to the forefront. This was the case of Mohammad Ahmed Khan vs. Shah Bano Begam. Shah Bano Begam was given triple *talaq*; she claimed maintenance under section 125 of the Code of Criminal Procedure, 1973. The Supreme Court held the validity of the claim. Being put to heavy pressure, the Rajiv Gandhi government overturned the Shah Bano case.

The following cases are related to Art.44:

Mohammad Ahmed Khan vs. Shah Bano Begam,	AIR 1985
Sarla Mudgal vs. Union of India	AIR 1995
Lily Thomas vs. Union of India	AIR 2000
John Vallamattam vs. Union of India	AIR 2003

While pronouncing verdict in the above noted cases, the Honourable Supreme Court felt the urgency of a uniform civil code. Justice V.N.Khare remarked: It is a matter of regret that Art.44 of the Constitution has not been given effect to.

### **Arguments in favour of uniform civil code:**

K.M.Munshi: Nowhere in advanced Muslim countries the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a civil code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights.<sup>6</sup>

A.K.Ayyar: In very many matters today the sponsors of the Hindu code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth.<sup>7</sup>

Dr.B.R. Ambedkar: I can cite innumerable enactments which would prove that this country has practically a civil code, uniform in content and applicable to the whole of the country.<sup>8</sup>

The names of some Acts:

- 1829 Suttee Immolation Prevention Act
- 1850 Caste Disabilities Removal Act
- 1856 Hindu Widow Remarriage Act
- 1860 The Indian Penal code
- 1864 The Indian Marriage Act
- 1865 The Indian Succession Act
- 1870 Female Infanticide Prevention Act
- 1872 The Indian Evidence Act
- 1872 The Special Marriage Act
- 1923 The Married Women's Property Act
- 1928 The Hindu Inheritance (Removal of Disabilities) Act
- 1929 Child Marriage Restraint Act
- 1937 The Hindu Women's Right to Property Act

Justice M.C.Chagla: That (Art.44) is a mandatory provision binding on the government. The Constitution was enacted for the whole country; and every section and community must accept its provisions and directives.<sup>9</sup>

Justice M.U.Beg: Questions of personal law such as marriage and succession are not matters of religion .It would be against reason to urge that a rule of succession which is just for a Hindu or a Sikh family ....could not be unjust in another family because they profess a different religion.<sup>10</sup>

In a survey held on 23<sup>rd</sup> June 1995 conducted by the newspaper, the *Times of India*, it has been found that 84% of the citizens favoured a uniform civil code.<sup>11</sup>

In a workshop held in August 1995 on family laws and Human rights at Lahore the delegates from Bangladesh and Pakistan suggested: all polygamous marriages shall be banned and made punishable.<sup>12</sup>

The United Nations in 2000 AD. Convened an international convention on the Elimination of all forms of Discrimination against Women (CEDAW). The convention commented that India has betrayed its women, and the principle to whom it became a signatory in 1953; it must enact a uniform family law; India under CEDAW is bound to ensure gender equality under national laws; Parliament must make a law divesting religion from personal laws.<sup>13</sup>In a survey held on 29<sup>th</sup> August 2005 conducted by the

famous journal, *India Today*, it has been found that 57% of the citizens favoured the implementation of Art.44.<sup>14</sup>

Justice Markandey Katju said: I am fully in support of uniform civil code, and one of the reasons for the backwardness of Muslims is the lack of modernization of their personal law.<sup>15</sup>

The Honourable Supreme Court of India in October 2015 reiterated the need of a uniform civil code and said ‘otherwise every religion will say it has a right to decide various issues as a matter of its personal law. We do not agree with this at all. It has to be done through a decree of a court. The reading of the judicial decisions shows that the courts in India have struggle hard to liberate the women section from the shackles of orthodoxy.’<sup>16</sup>

In 1986 the interest of a single individual was placed above national interest by the enactment of a controversial Act: Muslim Women (Right to Protection on Divorce) Act, 1986. Now, narrow politics of the country is placed above global interest.

Hypergamy, population explosion, over- consumption constitute a serious cause of world- wide global warming. So, it seems to me that world-wide global warming also provides an excellent reason to enact a uniform civil code. We must remember the warning of Malthus (1766-1834) on the necessity of family planning. We must foresee the horrible consequences of the submerge of many coastal countries in future because of over- population-related problems.

Moreover, inequality of treatment is generative of many maladies. A unilateral decision of a Muslim husband to divorce his wife without her consent is injustice. Let our socialist, secular state base the public administration on rational principle and policy.

In the concept of a uniform civil code, I find a distant echo of the Vedic hymn (tr.): ‘join together, speak one word, and let your minds arrive at one knowledge. (RigVeda, 10.191.2).

## Reference

1. Majumder, R C. *The History and Culture of the Indian People*. pp.5-22.
2. Patra, K K. *History and Debates of Constituent Assembly of India*. p.1.
3. Upadhyay, R. *Uniform Civil Code-it is time to revisit this issue*. p.2.
4. Sharma, B K. *Introduction to the Constitution of India*. p.139.
5. Sharma, B K. *Introduction to the Constitution of India*. pp.138,139.
6. Upadhyay. R. *Uniform Civil Code-it is time to revisit this issue*. p.2.
7. Jani, Neepa. *Uniform Civil code, A Vociferous Judicial Claim and Reluctant Political Will*. p.57.
8. Jani, Neepa. *Uniform Civil code, A Vociferous Judicial Claim and Reluctant Political Will*. p.57.
9. Sharma, B K. *Introduction to the Constitution of India*. p.139.
10. Sharma, B K. *Introduction to the Constitution of India*. p.139.
11. Sharma, B K. *Introduction to the Constitution of India*. p.139.
12. Upadhyay, R. *Uniform Civil Code-it is time to revisit this issue*. p.4.
13. Sharma, B K. *Introduction to the Constitution of India*. p.139.
14. Sharma, B K. *Introduction to the Constitution of India*. p.139.
15. Upadhyay, R. *Uniform Civil Code-it is time to revisit this issue*. p.1.
16. Desta, Kiron. *Uniform Civil Code*. p.125. English.

## Bibliography

1. Desta, Kiron. *Uniform Civil Code*. New Delhi: Deep and Deep Publication, 1995.

2. Jani, Neepa. *Uniform Civil code, A Vociferous Judicial Claim and Reluctant Political Will*. Ahmedabad: Voice of Research, 2013.
3. Majumder, R C. *The History and Culture of the Indian People*. Bombay: Bhartiya Vidya Bhavan, 1988.
4. Patra, K K. *History and Debates of Constituent Assembly of India*.
5. Sharma, B K. *Introduction to the Constitution of India*. New Delhi: PHI Learning Pvt.Ltd, 2011.
6. Upadhyay.R. *Uniform Civil Code-it is time to revisit this issue*. South Asia Analysis Group, 2014.