

TIME FOR A UNIFORM CIVIL CODE?

In 1948 when the Constitution of India was being framed and the values of pluralism were being discussed, one social reform became a bone of contention, it divided the Constituent Assembly and they debated for months but could not reach a consensus and finally they compromised on Uniform Civil Code (UCC). UCC means one civil code common to all. It would have meant the abolition of personal laws. Now the question arises what are personal laws? These laws are based on scriptures, religious texts that regulate almost every aspect of life, marriage, divorce, inheritance, adoption, guardianship, etc. A lot of these laws were discriminatory, unfair to minority groups and women. The Sharia law had provisions that deprived women of inheritance, certain Hindu customs deprived women of remarriage so what the Constituent Assembly wanted was to abolish or limit such laws. They wanted to govern India by Constitution so that the same laws apply equally to all citizens irrespective of their religion, sex, gender, etc.



Anika Choudhary

Research Scholar, Department of
Political Science,
Barkatullah University)

The Uniform Civil Code (UCC) controversy has resurfaced in Indian political debate. BJP is the only party that has included the UCC in its election manifestos since 1998. A number of BJP ruled states like Uttarakhand, Uttar Pradesh and Himachal Pradesh have already made their intention clear to implement the UCC. Now, being comfortably entrenched in power at the Centre as well as in most of the states, the party has a real chance to make it a reality.

The UCC is basically the formulation of one law related to personal issues such as regardless of their religion, all citizens of the country are entitled to wedding, relationship breakdown, inheritance, and adoption. However, as per different religions, different laws are currently in place for such matters in the country. There is Hindu Succession Act, Indian Christian Marriages Act, Hindu Marriage Act, and Parsi Marriage and Divorce Act. On the other hand, the Muslim personal laws are based on their religious texts.

Article 44

The Constitution of India provides for a UCC in the Article 44 of the "Directive Principles of State Policy" that specifies, "The State shall seek to secure for the Indian citizens a uniform Civil Code across the Territory of India." Since the subjects such as Wedding, separation, adoption, and inheritance are among the concurrent list of topics that can be regulated by both the states and the federal government. However, constitutional experts argue that since Article 44 pertains to all Indian citizens, only Parliament has the authority to pass legislation pertaining to a UCC.



Faced with several complex issues while adjudicating the cases related to marriage, divorce, adoption and succession, the Supreme Court of India on a number of occasions has expressed its strong opinion in favor of bringing in a UCC for all the citizens of the country. In 1985, while delivering the famous Shah Bano judgment, the Supreme Court had stated that a unified civil code would aid in national unification by removing varying allegiances to legislation with competing philosophies.



Constituent Assembly Debates

The arguments for and against the UCC today are almost the same as were put during the debates in the Constituent Assembly that formulated the

Constitution. Discussions on the UCC were held in the Sub-Committee on Fundamental Rights between February and April 1947. Making a strong pitch in favour of a UCC, Congress leader Kanhaiya Lal Maneklal Munshi said, "There is one important consideration which we have to bear in mind- and I urge my Muslim neighbors to understand that the sooner we get rid of this isolationist way of thinking, the better for the nation. The remainder of life must be controlled, coordinated, and adjusted so that we can build a robust and integrated nation as soon as possible.

Even the demand for a UCC came from the modernist leaders of that time as well, Minoo Masani, a Parsi member of Congress from Bombay and Amrit Kaur jointly demanded that the provision be included in the justifiable part of the Constitution so that it could be enforceable by court. They argued that "the existence of personal rules based on religion that keep the nation split into impenetrable compartments in many aspects of life has been one of the things that has prevented India from becoming a nation". However, the majority of sub-committee members opposed this demand, and the provision was recommended to be incorporated in the Directive Principles section of the Constitution.

One Personal Law

A secular democratic republic in the modern period should have a common civil and personal code for all of its citizens, regardless of class, status, race, sex, etc. It will grant all citizens a similar rights and advance gender equity. It is a well-known fact that nearly all religions' current personal laws discriminate against women. In succession and inheritance matters, men typically receive higher preference position. Both men and women will be on equal footing with a uniform civil code. India of today is a completely different society, with 55% of its citizens under 25. The global and widely applied values of equity, empathy, and modernity influence their societal attitudes and ambitions. To fully maximise their potential for nation building, their belief that they should lose their identity based on any religion must be carefully considered. A UCC will help cementing broader racial harmony. Since personal laws and other civil laws (apart from criminal laws) are uniform across the board, all Indian residents are already treated equally in court. UCC will give all citizens access to a similar set of personal laws. On the other hand, due to the immense ethnic diversity in India among the various faiths, sects, races, provinces, etc., it is practically difficult to have a common and universal set of laws for personal concerns like marriage, etc. The UCC is seen as an infringement on religious freedom by many communities, especially minority ones. They worry that a single code will disregard their customs and impose laws that will be primarily imposed and influenced by the largest religious communities. In addition, the Constitution guarantees the freedom to practise any faith. Some contend that the scope of religious freedom will be diminished with the adoption of standard rules and their compulsion.

CONCLUSION

More than seven decades after independence, the country must try and secure a UCC for all its citizens. However, in order to create a Uniform Civil Code in the true sense, it is necessary to freely borrow from various personal laws, gradually amend each of them, issue judicial declarations guaranteeing gender parity, and adopt enormous perceptions on marriage, maintenance, adoption, and succession by recognising the perks one community receives from the others. It will take a lot of time and labour to complete this task. When dealing with the UCC for both majority and minority communities, the Union Government must always be considerate and impartial. ■