



# Freedom of Religion in The Context of Uniform Civil Code

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## **Abstract:**

*Secularism is one of the goals which is enshrined in the preamble to the Constitution to achieve in the future. Article 44 of the Indian Constitution talks about UNIFORM CIVIL CODE which is actually step towards the secularism, but Indian history shows that politicians are not ready to give effect to this provision keeping their interests safe aside. The enactment on the uniform civil code should really come into existence which would enhance the spirit of brotherhood in India.*

## ● **Introduction:**

The Uniform Civil Code has become most controversial issue in India due to its very character. Uniform Civil Code (UCC) is the legislation dealing with family matters like marriage, divorce, inheritance, succession, adoption, maintenance, guardianship, etc. But main essence of this code is its applicability. It applies to all persons irrespective of their religion, caste, creed, birth, etc. Therefore, it has become controversial issue because it goes against personal laws. Thus, some sections of the community are severely protesting the enactment of UCC because they think that it violates the freedom of religion, one of the fundamental rights guaranteed under Article 25 to 28. The State cannot make any law which will infringe fundamental rights and if it makes such law, then it will be held as unconstitutional to the extent of its contravention under Art 13(2) by the judiciary. But really the UCC is violating freedom of religion? It is not so because Indian Constitution itself provides for enacting UCC under Article 44<sup>1</sup> in Part IV of the Constitution i.e. Directive Principles of State Policy. Thus it has a Constitutional base. The directives given in Part IV are not only directions but the Constitution imposes duty on the State to make laws on the matters given in Part IV.

India adopted its Constitution on 26<sup>th</sup> Nov. 1949 but till today, after passing 68 yrs also, government did not pass UCC. It puts forth the reason for not enacting UCC that it would create great unrest and chaos in the society. Actually government is failed to create faith in the minds of people about UCC. People think that UCC is against religion. It will destroy their religious rights and beliefs. But there are countries having uniform family law without hampering their freedom of religion, for e.g. Germany, European States, U.S.A, Australia.

Present research article deals with the relation between freedom of religion and UCC. This is not today's issue. Article 44 of the Indian Constitution under Part IV states that the State shall endeavour to secure the uniform civil code for all citizens. Actually this provision was to be added in Part III i.e. Fundamental Rights but it was opposed by some of the members in the Constituent Assembly. Thus it was added in Part IV. The State is duty bound to enact UCC but it did not enact it. As UCC is not a fundamental right, it is not enforceable in the Court of law. But judiciary has given directions to the legislature to enact UCC. In *ShahaBano*<sup>2</sup>'s case, while ordering maintenance to be given to the petitioner beyond iddat period, the Supreme Court directed to the legislature to enact UCC. Again in *SarlaMudgal*<sup>3</sup>'s case, Supreme Court reminded the legislature to enact UCC. In this case, the husband for performing second marriage, had converted in Muslim religion to take advantage of bigamy, because Hindu Law does not allow bigamy. But Supreme Court held that unless first marriage by Hindu is dissolved under Hindu Law, he could not perform second marriage. The Supreme Court advised legislature to unify all personal laws in one statute i.e. UCC.

Nowadays, this issue has been politicized. Some of the communities like Hindu as well as



Muslims are opposing this code because they are scared that this code will be against their religion. The Muslims are not feeling secure to accept such code because they think that Hindu law would be imposed upon them and their religion will be in danger. Thus they are criticizing this code and expressing that their fundamental right of religion will be violated. It is not against the freedom of religion. It would not violate this fundamental right. Many countries in the world have adopted common civil code which has proved beneficial and brought gender justice. Such code is necessary to bring uniformity in family law which will automatically maintain unity and integrity of the nation. The spirit of brotherhood will be promoted in India which is one of the objectives mentioned in the Preamble of the Constitution.

UCC is a law which affects personal laws of different communities of the society. In India, every person is regulated by his or her own religion through personal laws including matrimonial matters, property rights of men and women, adoption, guardianship, etc. When the discussion is made on UCC, some of the sections like Muslims and even Hindus oppose such enactment. Thus it is creating social unrest. Religion regulates the behavior of persons in the society but it is based upon ancient manuscripts where male dominance is seen almost in every religion. Thus, it causes inequality between men and women.

#### ● **International Scenario:**

The UCC is not the subject of Indian concern only. There are so many countries who have adopted UCC even though at initial stage, it was opposed but later on it was accepted by the community. It becomes difficult for multi-religious countries to adopt UCC because minorities feel insecure to accept such code due to fear that majority's view and ideals will be imposed upon them. But countries like USA, Australia, Germany, European States have accepted common civil code for all religions. Thus, on international level, it has been proved successful in achieving its goal i.e. unification of family law.

#### ● **National scenario:**

In India, we have no UCC except Goa. Goa is the only State which has adopted UCC which is based upon Portuguese Civil Code. Thus, Muslim man whose marriage is registered in Goa cannot follow his personal law for matrimonial causes but he will be dealt with by uniform civil law. Thus Muslim man in Goa cannot perform polygamy or cannot pronounce Triple Talaq. The debate on UCC is going on since making of the Constitution. But it got boost after **Shahabano's** case where Supreme Court examined Muslim law and gave decision in favour of ShahaBano. It directed legislature to enact UCC to overcome such conflicting issues and to abolish derogatory practices which exploits the women. But this decision could not be followed because of enactment of **The Muslim Women (Protection of Rights on Divorce) Act, 1986** passed by Rajiv Gandhi's government under pressure of Muslim community, which allowed maintenance to Muslim wife during iddat period only.

The term came under heavy scrutiny during the Constitutional Assembly Debates, with each community vehemently expressing its dissent on the same.<sup>4</sup> The main argument of those who spoke in favour of such a code was that it has the potential to unite India because Hindus and Muslims had followed the "common customary Hindu civil code" smoothly till 1937 when "the Muslim League-British combine" divided them by imposing sharia on Muslims through the Muslim Personal Law (Shariat) Application Act. But only a minuscule minority of Muslims followed Hindu customs before 1937. Even this section had the right under laws such as the CutchiMemons Act, 1920 and the Mahomedan Inheritance Act (II of 1897) to opt for "Mahomedan Law". As for a majority of Muslims, there is enough evidence to show they followed Muslim law, not the Hindu civil code.<sup>5</sup>

The issue of UCC again came in question before Supreme Court not directly but through personal laws. The Court is consistently insisting legislature to enact UCC but yet government couldnot pass such Act. But now, positive initiatives have been taken to consider this code and thus Law Commission of India has been



requested by the government in 2016 to suggest recommendations on UCC whether it would be acceptable or not by taking into consideration the opinion of public. The law commission has formulated questionnaire about enactment of UCC. There is no positive environment in India to enact Uniform Civil Code but to accelerate the spirit of brotherhood, to achieve national goal. The communities should come together and think over this topic from the national perspective and not religious point of view.

**(Endnotes)**

- 1 Article 44- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India
- 2 Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945
- 3 SarlaMudgal v. Union Of India,AIR 1995 SC 1531
- 4 Constitutional Assembly Debates, Vol VII (1949) p.543
- 5 A.Rani, *A Term Paper on Uniform Civil Code*, 2 International Journal of Advance Research, Ideas and Innovations in Technology,64, 66 (2016) available at <https://www.ijariit.com/manuscripts/v2i6/V2I6-1279.pdf>