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## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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# **“CONSTITUENT ASSEMBLY DEBATE UNIFORM CIVIL CODE: ONE COUNTRY, ONE LAW”**

Authored By-Ananya Eliza Varghese

3<sup>rd</sup> Year, 1<sup>st</sup> Semester

NALSAR University of law, Hyderabad

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## Abstract

This paper talks about the origin of uniform civil code in India. We look at the idea from the lens of the founding fathers of our constitution. After India was released from the clutches of the Britishers the first important step ahead was to frame a constitution that would hold the new found spirit of nationality in India. During this process, the constituent assembly had been debating on various provisions that they think should be part of the constitution of India and those that should not. One such issue was the uniform civil code; this project specifically deals with the various debates surrounding the uniform civil code by the constituent assembly. This paper will give an insight on what does uniform civil code mean, why it comes under the ambit of directive principle of state policy and not the fundamental rights and if India is now ready to implement the UCC (Uniform Civil Code). The paper also consists of the recent developments leading to the implementation of UCC. Just like how the society is changing by the moment it is important that the laws governing the society also keep changing along, there is a reason why law is considered dynamic and not static. Even though India was not ready back then to implement the uniform civil code, is she ready now?

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## What Is Uniform Civil Code?

The uniform civil was laid down by the founding fathers of our constitution under article 44 under the directive principles of state policy. Article 44 under the Directive Principles of State Policy states that: *The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India*<sup>1</sup> The uniform civil code is one that would provide one law for the entire country, applicable to all religious communities in their personal issues like marriage , divorce, adoption etc.<sup>2</sup> in the present all personal laws are governed by the personal laws of each religion for example the Hindu Marriage Act governs all marriage related issues among Hindus, dissolution of Muslim marriages act,1939.<sup>3</sup> Talks about different ways through which divorce can be obtained by Muslims and similarly there all laws for Christians as well. If the Uniform civil code is implemented then every citizen would be considered equal and similar laws will govern all irrespective of their religion. The issue of whether or not to implement the Uniform Civil Code has been a widely debated topic since 2019 when the first ever petition was filed for framing the uniform civil code to promote equality, dignity of women and also to promote national integration.

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<sup>1</sup> Shabbeer Ahmed & Shabbeer Ahmed, *UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER*, 67 INDIAN J. POLIT. SCI. 545–552 (2006).

<sup>2</sup> Explained: Uniform Civil code — the debate, the status, , THE INDIAN EXPRESS (2019), <https://indianexpress.com/article/explained/explained-uniform-civil-code-the-debate-the-status-6004396/> (last visited Apr 5, 2021).

<sup>3</sup> Dissolution Of Muslim Marriages Act, 1939, , <http://www.bareactslive.com/ACA/ACT025.HTM> (last visited Apr 5, 2021).

## Constituent Assembly Debate On Uniform Civil Code

The beginning of the debate around the uniform civil code began during the framing of the constitution of India. There was a subcommittee on the fundamental rights where they had to come up with relevant fundamental rights that they think should be incorporated in the constitution of India. Everybody in the committee was encouraged to submit their individual draft of fundamental rights. Drafts submitted by Ambedkar, Munshi and Minoo Masani came up with the idea to adopt uniform civil code. Many other members came up with the idea of splitting the fundamental rights into two headers that is justiciable and non-justiciable fundamental rights where the justiciable rights would be enforceable by the courts and the non-justiciable would not.

After a few deliberations the report was submitted to the advisory committee which was the parent committee where the uniform civil code was submitted under the non-justiciable rights.<sup>4</sup> by this we can understand that not many within the subcommittee gave consent to the uniform civil code.

On 23<sup>rd</sup> November 1948 the constituent assembly began with the drafting of article 35 of constitution the draft stated “*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*”<sup>5</sup>. this draft triggered huge conflicts within the committee most of the opposition were from the Muslim members and they moved amendments to not include personal laws in the draft. Towards the end of the debate the committee reached a consensus that uniform civil code would be a provision under the directive principle, which means that the state is not obliged to bring it immediately and that if implemented, consent from all communities had to be taken.

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<sup>4</sup> UCC-Part-1-Constitutional-History.pdf, , <https://clpr.org.in/wp-content/uploads/2017/11/UCC-Part-1-Constitutional-History.pdf> (last visited Apr 11, 2021).

<sup>5</sup> Constituent Assembly of India Debates, , <http://loksabhaph.nic.in/writereaddata/cadebatefiles/C02121948.html> (last visited Apr 12, 2021).

## **Reasons For Opposing Uniform Civil Code**

The matter of whether or not the uniform civil court should come within the ambit of fundamental rights was made by a vote. By a majority of 5: 4 the subcommittee headed by sardar Vallabhbhai Patel stated that the UCC was not within the scope of fundamental rights hence we can see that the fundamental right of freedom of religion is superior to the directive principle of uniform civil code.<sup>6</sup>

A reason why the UCC was opposed was that member like Kazi Syed Karim Uddin and Maulana Hasrat Mohani believed that the constitution should not force a deep change in social and cultural aspect of the society and that the main focus should be to maintain the spirit of the nation as it was at that time.<sup>7</sup>

Another argument was that the UCC will violate the fundamental right of Freedom of religion

The Muslim members like Mohammed Ismail's sahib stated that uniform civil code will create chaos in the society and that if people could follow their own personal laws, then there would not be any feeling of discontent. Pocker sahib claimed that sacred rights of the minority community must be protected and this must be done by the majority community this would help them feel heard. To this argument K M Munshi said that there are many advanced Muslim majority countries where they do not recognise the personal laws of the minority there for example Egypt and turkey where no minority community are allowed to have their own personal laws.<sup>8</sup>

Another major argument was the Muslim personal law has been immutable law from ancient times.to this argument Ambedkar stated that there has been a uniform criminal law, a uniform transfer of property act etc in existence and the Muslims have been following these so what is the problem in extending this to the matters of marriage, divorce, succession etc.

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<sup>6</sup> What did the Constituent Assembly say on the Uniform Civil Code?, , THE LEAFLET (2020), <https://www.theleaflet.in/what-did-the-constituent-assembly-say-on-the-uniform-civil-code/> (last visited Apr 13, 2021).

<sup>7</sup> Constitution of India, , [https://www.constitutionofindia.net/constitution\\_of\\_india/directive\\_principles\\_of\\_state\\_policy/articles/Article%2044](https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles/Article%2044) (last visited Apr 12, 2021).

<sup>8</sup> Uniform civil code: How did we get here?, , THE NEW INDIAN EXPRESS , <https://www.newindianexpress.com/opinions/2018/jul/17/uniform-civil-code-how-did-we-get-here-1844280.html> (last visited Apr 13, 2021).

## **Benefits Of Implementing Uniform Civil Code**

The first and obvious benefit of implementing UCC is that it would promote equality in the society since all religious communities would have to follow a same set of laws in all civil matters including marriage, divorce, adoption, inheritance etc.

Having a uniform set of laws will bring people closer and will increase the feeling of nationality and would integrate the country into a unit.

At the present what we have is selective secularism where there are some laws that are same across all religions and some where they are different like the laws on marriage etc so implementing the UCC would make India secular in the true sense<sup>9</sup>

If we look at it from a gender perspective in the constituent assembly there were no women members in the committee that decided upon the uniform civil code so their concerns were never heard on this issue at that time. Now implementing the uniform civil code would also improve the status of women in the society since many personal laws on marriage, divorce, adoption etc are discriminatory to women.<sup>10</sup>

The next important benefit will be to reduce the burden on the courts. Since different religion has different set of law it leads to a lot of confusion while delivering justice which leads to delayed justice delivery.<sup>11</sup>

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<sup>9</sup> Top 7 Reasons Why India Needs a Uniform Civil Code – Hill Post, , <https://hillpost.in/2013/08/top-7-reasons-why-india-needs-a-uniform-civil-code/95038/> (last visited Apr 13, 2021).

<sup>10</sup> Leila Seth, *A Uniform Civil Code: towards gender justice on JSTOR*, <https://enalsar.informaticsglobal.com:2125/stable/23005979> (last visited Apr 13, 2021).

<sup>11</sup> Saket Mangla, *Uniform Civil Code Boon to Our Society: Merits*, <http://www.legalserviceindia.com/legal/article-1720-uniform-civil-code-boon-to-our-society-merits.html> (last visited Apr 14, 2021).

## **Fundamental Rights And Directive Principles Of State Policy**

“In the Indian constitution the fundamental rights (part III) and directive principles of state policy (part IV) have found a bedrock of balance, if we were to give absolute supremacy of one over the other then the harmony of the constitution will be disturbed. Balance and harmony are important features of the basic structure of the Indian constitution.”<sup>12</sup> said by PN Bhagwati in the Minerva mills case.<sup>13</sup>

As mentioned earlier in this paper the division of rights into justiciable and non-justiciable recommended by B.N Rao. According to him rights were classified into, the fundamental rights and the directive principles of state policy. The nature of the rights was observed by him. He stated that some rights require positive action by the state and some that only can be guaranteed as far the action is predictable.<sup>14</sup> we can see that these both are interlacing and intimate part of the constitution.

In the issue of Kerala education bill the supreme court stated that even though the directive principles cannot supersede the fundamental rights, the court must not ignore the directive principles of state policy. The harmonious principle should be adopted and the state should strive to give effect to both as much as possible. The supreme court also remarked that the fundamental rights and directive principles are both complementary and supplementary to each other.<sup>15</sup>

The directive principle acts as a steering wheel of the society and the state has a moral duty to frame laws in line with the directive principles. Now when we can see that article 44 i.e., the uniform civil code which comes under directive principle is contradicting the article 25 which is a fundamental right to freedom. The personal laws as we saw earlier are concerned with marriage, divorce, adoption, maintenance etc. now these issues have no relation to any religion but every religion hold different laws regarding these issues. we see no interference what so ever with the religion as religion can be practiced, professed and propagated even if there was a uniform civil code in the county. The faith of a person towards their religion does not seem to fetter by the

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<sup>12</sup> Satya Prakash, *Directive principles of state policy: Conscience of the Constitution*, HINDUSTAN TIMES (2015), <https://www.hindustantimes.com/india/directive-principles-of-state-policy-conscience-of-the-constitution/story-IB67mrmVaSSJhV5NSC1WbO.html> (last visited Apr 15, 2021).

<sup>13</sup> AIR 1980 SC 1789

<sup>14</sup> Quoted by B. Shiva Rao, II the Framing of Indian Constitution: Select Documents 33 (1968)

<sup>15</sup> Jagadish at, *Relation Between Part III And Part IV Of Constitution Of India- Changing Trends*, <http://www.legalservicesindia.com/article/1058/Relation-Between-Part-III-And-Part-IV-Of-Constitution-Of-India- Changing-Trends.html> (last visited Apr 15, 2021).

personal laws. when we have a uniform criminal law without hurting the sentiments of people there is no reason why uniform civil code should not be implemented.<sup>16</sup>

## **Recent Developments In The Field Of Ucc**

### **The triple talaq and the article 370**

The government taking action on the issue of triple talak by passing the Muslim women (protection of Rights on marriage) act<sup>17</sup> 2019 criminalizing the practise of triple talaq. This bill was passed by both the houses of the parliament with a 2/3<sup>rd</sup> majority. The next action was the abrogation of article 370 which removes the special provisions given to the state of Jammu and Kashmir. Now it allows all law followed in the rest of India to be applicable in Jammu and Kashmir too. We can assume that these actions show the that the legislature is moving along the lines of uniform civil code.<sup>18</sup>

### **Supreme court statement**

Day in and day out thousands of cases come to the supreme court where the court feels the need for a uniform civil code.in 2019 the supreme court questioned the legislature on not taking steps towards the implementation of the uniform civil code. The court stated that in the last 63 years no step has been taken in order to implement the UCC<sup>19</sup>. The court also made a remark on how the goa civil code is an example of how we can break the barriers of religion. These statements show that the judiciary has the intend to implement the uniform civil code.

### **The shah Bano Case**

The case of *Mohd. Ahman Khan v Shah Bano Begum*<sup>20</sup> a man drove out his wife from his house after 43 years of married life. The wife asked the husband for maintenance and the husband refused by divorcing her by verbally stating talaq three times. While the proceedings of this case it was brought to light that the laws of inheritance in Muslim women are highly indifferent towards women. Y.V. Chandrachud J referred to the article 44 of the constitution which is the UCC, he said that this article is like a dead letter so far and that to provide better judgement to all the UCC has to be implemented or at least a beginning has to be made in this matter.

<sup>16</sup> Why India needs a Uniform Civil Code, , THE STATESMAN (2020),

<sup>17</sup> 209473.pdf, , <http://egazette.nic.in/WriteReadData/2019/209473.pdf> (last visited Apr 15, 2021).

<sup>18</sup> Rachit Garg, *Does the Uniform Civil Code brings the uniformity in India*, PLEADERS (2021), <https://blog.ipleaders.in/uniform-civil-code-brings-uniformity-india/> (last visited Apr 15, 2021).

<sup>19</sup> Supreme Court: No steps taken in 63 years on uniform civil code, says Supreme Court | India News - Times of India, , <https://timesofindia.indiatimes.com/india/no-steps-taken-in-63-years-on-uniform-civil-code-says-sc/articleshow/71120334.cms> (last visited Apr 15, 2021).

<sup>20</sup> AIR 1985 SC 945

## Conclusion

From this research we can understand that when the constituent assembly took up the debate on the uniform civil code there were many shortcomings to it as the country had already wounded by the Britishers and it probably wouldn't be the best idea to impose a uniform civil code affecting matters such as divorce, marriage, adoption, inheritance etc. back then it was important that people would feel secure and comfortable with the new found feeling of nationality and freedom. But things have changed now India has been developing multi dimensionally and it is important that basic rights such as equality is granted to all irrespective of religion, gender etc. uniform civil code is very necessary now to reduce the burden on the courts so that we have a speedy and more efficient justice delivery system in place. It would also be a great initiative to empower women for example the Hindu women's property rights under the Hindu succession act 1956 is till discriminatory even after the amendment in 2005 because if a woman dies without a will her property is given to the heir from her husband's side. Now when a uniform civil code is implemented in India it would make sure that the laws are not discriminatory in nature. Now comes the most important reason why it should be implemented, to promote integrity in the nation. The uniform civil code would help to break down religious, class and gender barriers and make us feel like one. This process will definitely not be easy considering the diverse culture in the country and political interference but it definitely would help India grow if we made or took initiatives in the lines to implement the UCC. The need of a uniform civil code has to be seen from horizons above the vote banks and political benefits. When B.R Ambedkar said that for the moment the civil code can be put aside unless it's voluntary little did, he know that this state would not change even after 74 years of independence. I think it's time that we take the dreams of our founding fathers to the next step and make our country a better place to live which would be filled with peace and prosperity.