Uniform Civil Code in a Multicultural and Secular Society

Deepak Kumar
Department of Public Administration
Email: deepak.shoki@gmail.com

Abstract: Uniform civil code, in India, is highly misunderstood, undervalued and grossly unutilized concept which is lingering over the petty political interests of our lame legislative body. It has been tagged with various misconceptions like, it is being ‘forcibly imposed’, it is against the religious freedom granted under article 25, and it will lead communal riots, so and so. However that is not the clear picture if we see the long term perspectives of its successful implementation. Uniform civil code can bring uniformity, efficiency in laws and administration, it can unite different communities, it can lighten the burden of judiciary which is choking over various hues of religious laws, it can minimize communal clashes, it can save a lot of political and administrative energy to settle these clashes, it can bring gender equality, it can cleanse our election system which is dominated over sectarianism and religious vote banks etc. To call ourselves a civilized society we need no connection between laws and religion. India can become secular only when it will move away from religion and caste compulsions. As today religion has become the most abused and misused ideology to fulfill vested interests. To consider more, as nearly every modern nation has a uniform civil code, India also needs to call herself progressive, modern and above all, ‘practically-secular’.

Keywords: Civil Code, Communal Rights, Religion, Caste, Vote Bank, Secular.

Introduction: A civil code is generally a set of laws and rules applicable to the concerns of marriage, divorce, property, guardianship, adoption, inheritance, etc which affects a coterie of private aspects of citizens. Civil codes by tradition are governed by religious rituals, which are losing their relevance in a modern liberal and progressive society. Many of these laws have become defunct, outdated and misused. Particularly, they are tilted against the rights of women and no progressive religion can stand against the welfare of women of their community. Thus, government should be sensitive enough to create an environment in which a Uniform civil code is not seen as Hindu or majority civil code, where Proper representation of all stakeholders are taken care of in the process of drafting, where effective communication system is established to bridge any trust deficit between communities. Once the issue is lifted above from the communal domain, Uniform civil code will definitely see the light of day.

Now what does our constitution Promise?
Our constitution speaks both sides, one the one side it advocates for complete freedom of religious practices as provided by article 25 which guarantees freedom of conscience and free profession, practice and propagation of religion, on the other side it also speaks of state’s control over religious practices, though not directly but in an implied form as directed by article 44 and article 14(right to equality).

While framing the Indian Constitution, it was popularly debated that a secular republic should have common law for all citizens rather than variant religious rules based on different faiths. Eventually, the uniform civil code was opted under Article 44 of the Constitution. However, this article falls under the 'Directive Principles of the State Policy' and thus, it can’t be enforceable by any Court of Law and thereby becomes an irony.

The constitution says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." India, being a land of diversity with various religions, faiths, beliefs can be rightly considered as a cradle of civilization. It was this diversity of hues, which forced our founding fathers to think of ‘secularism’ as the core value of our constitution. However, it is said that absence of Uniform Civil Code (UCC) obliterates and obscures the secular character of India as -

A few believe that different personal laws of property, adoption, marriage, inheritance and divorce from different religions tantamount to unequal state's treatment and becomes antithesis to secularism. At the same time, it is also argued that in the absence of Uniform civil code, cleavages between various sects and religions continue to exist with minimal of ritual-cultural exchanges, thereby thwarting the secular character of state.

Do we really have a secular democracy?

Indian secularism has been adjusting and changing its definitions time to time and there are multifarious views about its real image. Some believes in secularity others out-rightly condemns it. If India is being considered a truly secular nation then its civil code should also have to be truly secular. Whether you belong to this religion or that, the same calculus yardstick should apply to all. A marriage is a marriage, no matter what your religion says, and a divorce is a divorce. The exigencies and sensitzations of religions do not need to be the parts of state, though these can be the parts of any temple, mosque and church. They need to stay that way only. If religion can play a role in helping families live in harmony that should be a welcome move. But when they decide to marry or divorce, it should be handled by the law of land.

There are some basic Factors affecting the implementation of Uniform civil code in India. The most leading one is the prevalence of opinion that imposing Uniform civil code will be the state's intrusion into one's religion, like a majority is bulldozing minority and this will threaten the unity and integrity of nation. Another being the social insecurity of minority groups which are apprehensive of loss of identity among majority groups as if their religious laws are sidelined by any common civil code. These two aspects are openly manifested but there is one more disguised reason which is hampering the road of uniform civil code is the Status-quo of some groups which facilitates their vested interests time to time, they invoke communal overtones, cultural claims,
Factors in favor of having such a uniform code

- There are many laws among many religions related to society as a whole and especially for family, marriage, divorce, property, inheritance, compensation, penalty etc., creating dilemmas of confusion. One such law will definitely bring uniformity of procedure and systematization of administration. So it would be much better for executive and judiciary to maintain a fair play balance between law and order.
- Most of current laws are obsolete and outdated having an orthodox touch, so a new law fulfilling the need of 21st century would be a much rational need for the time being.
- It will give more space for women and their rights, many issues had been highlighted by Shah Bano Case and Hindu Marriage Act. Many disguised malpractices would be targeted like Dahej, Muhar, Triple Talaq, Kanya daan etc. Touching such issues will help in targeting the satisfaction of approximately half of our population i.e. women.
- A common civil code will help Indian society to move forward on the lines of a developed nation.
- When we allow our personal laws of traditional values, we constitute an alternate judicial system based on thousands of years old rituals. A uniform civil code would change that scenario.

Uniform civil code, if implemented would certainly act an adhesive force for Indian diversity. It will strengthen inter-religious and inter-faith bonding along with elevating women's' status in society. However, looking at the sensitivity of this issue, a wider consultation forum coupled with consensus based approach needs to be evolved which mandatorily include all stakeholders.

But, successive governments have been constantly failing in implementing uniform civil code. Though Supreme Court from time to time, as in case of Shah Bano and Daniala Latifi, exhorted government to have a uniform civil code. No doubt that the implementation of a UCC will accentuate Indian secularism and its credentials by leaching a common system of treatment in the judicial book. This way can actually maintain the diversity while fostering human rights that are sensitive to gender, region and religion.
The Shah Bano begum case brought the Uniform civil code debate to limelight. Since then various efforts have been made to actualize it but no genuine outcome realized.

The reasons to blame for its non-implementation are:

- Existence of Communalism which has made it a much politicized issue. Communalism makes the issue more vulnerable when the policy of appeasement is played towards certain sects and religions.
- Lack of clarity and consensus among religions on how it is to be implemented and what will be the repercussions.
- Apprehension towards majoritarianism, which is being imposed on minorities.
- Feeling that a Uniform code is same as a Hindu code. It permeates a fear of identity loss.
- Weak political will, Political parties are not enough bold to manage its affairs.
- Religious demagogues fear loss of their authority over the followers.
- Diversity of our country, having so many religions and beliefs, it is very hard to put them under one umbrella law.
- Most people, being imbued in their religious rituals are not ready to fully adopt the truly secular laws separated from orthodox customs.

A uniform code is a sign of a modern progressive nation. It says that the nation has moved away from the evils of caste and religious politics. Insofar our economic growth line has been recorded highest in the world while our social growth is not that way. However, it is not that tough though, if Goa can have a common family law based on the lines of Uniform Civil Code other states can also think of.

Is it getting all political?

Whether the common men need a common code or not, and who literally cares about its implementation, the truth is however susceptible that this issue has been used only for temporary political gains. People are mobilized by protocol parties time to time, especially near elections where some parties favor, others protest and no one really cares about its genuine prospects and implementation. The only thing which is happening over ground is mere ceremonial talking. The only agenda which has been displayed is how to sensitize people’s feelings. Political parties for this, use multifarious tactics of influential publicity. They believe in the idea that India is divided into multiple ideas and identities, these layered divisions of multicultural societies are always a fertile ground of politics and this ground can easily yield vested interests.

The debate about uniform civil code should be above religion. It is not something which restricts one religion or facilitates other rather it should be realized on political and moral grounds. The issue should be debated on “political and moral conviction” because this conviction is the real need of time which can put ideological concepts into reality, but unfortunately religion has been used to manifest political concerns only. This obscures the real time need and overshadowed the reality.

Is this the right time for implementing UCC?
I think yes, the time has enough ripe to absorb its sensitivities though the country has managed without a uniform civil code since independence. But that is not counted as such a smooth run, and that management is always compromised. So is it needed now? We have genuine arguments on both sides which depicts our secular and democratic republican nature which can digest a common law for all of its citizens. Moreover, now we have a majority government which can take bold decisions and whose acceptability will also be high. Today, Prime ministerial Leadership at the center is also highly considerable so even unpopular decisions can be taken. Major opponents of these common codes are Islamic Maulanas, they have largely become insignificant. Plus India is heavily moving towards an industrialized and urbanized society whereas these religious laws are way back from the feudal society.

Uniform civil code can create some sort of national integration. The next level is to maintain unity in diversity. India is inhabited by people of all color, race, religion, culture and languages. So it’s a burning challenge for this kind of umbrella law which directly confronts traditional laws, be it Christian, Muslim, or Hindu. They all are legal concepts and they all need reforms. For example Shariat law, which is drawn from Quran, same as Hindu law which is derived from various scriptures and has the deep emotional value attached. So to change such traditional laws which regulates born to death rituals cannot be easily changed by any constitution. And the acceptability of this reverential gust has to be accommodated with robust consensus. Unless this consensus is achieved, it may not lead to national integration. Thus, only imposition will not serve the purpose and the government should move with precautions in hand.

**Crucial aspects**

1. Religion reforms are needed and the demand should genuinely emanate from people.
2. As a government feels, there should be a larger debate on UCC to decide if it should be there or not. It has to perform the advisory role.
3. If implemented the structure of uniform civil code should be minimalistic, if it is detailed it is going to encroach religions.

However, no particular time may be perfect for our country to have a Uniform Civil Code in its entirety. And only a gradual change while interpreting various ethos of our multicultural diversity can absorb such a law. Different communities will be willing to adjust change gradually rather than being forced abruptly. Again the focus comes over consensus-fiber which has to be built among all cultures. However, the only thing to be taken care of is to see that such debates can happen without polarizing the country. The society should understand that every religion is to be open for reform and adjustments of progressive laws. Representatives of religions should come up with their idea of progressive laws and then the common laws among them should be implemented first. This becomes crucial especially to improve the condition of women and minorities. For such sensitive issues a bottom up approach is needed where reforms should start from below rather than imposition from top. There should be wide range of discussions among stakeholders and the fear of identity loss of minority religions should be addressed.
Conclusion: We have to stop judging the issue of uniform civil code through the lens of religion and communalism and rather carry out a well-negotiated understanding aiming at only human rights in general and women rights in particular. This way the uniform civil code won’t remain a distant reality. Plus we need to understand that aiming an absolute uniformity in a state of diversity is a utopia; our diversity will not pave way for a clean slate to start with. The solution lies in an informal inculcation of basic guidelines in every law whether religious or a state law. Religion is always sacred to humans and any change to their old tradition should be done by providing proper reasoning and validation. This will in turn broaden the acceptance for a uniform law without giving it a communal or political dimension. Without bringing people on same page any forceful change will not bring any kind of reform and will result into an atmosphere of apprehensive contradictions.
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