

Ucc: Harmony or Threat? Diving Into the Constitutional Debate of DPSPS(Article 44) and Fundamental Rights (Article 25)

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Abstract:

This article examines the constitutional relationship between Article 25, which protects freedom of religion, and Article 44, which directs the State to work towards a Uniform Civil Code (UCC). It discusses the Constituent Assembly debates and key judicial decisions concerning personal laws, equality, and religious freedom. Cases such as *Shah Bano*, *Sarla Mudgal*, *Shayara Bano*, and *Sabarimala* illustrate the growing role of constitutional values in regulating secular aspects of personal law. The article argues that Article 25 and Article 44 need not be treated as conflicting provisions. A carefully framed, religion-neutral UCC can promote equality and individual dignity while continuing to protect essential religious practices. This article this constitutional knot, arguing that Article 44 and Article 25 are not inherently self-destructive, but rather deeply interdependent mechanisms capable of advancing substantive equality without sacrificing democratic pluralism.

Keyword: Indian Constitution, Fundamental Rights, Directive Principles of State Policy, Supreme Court, Justiciable Rights.

Method: The required data for this article was gathered using the observation approach. Additionally, information has been gathered from a variety of books, the Constitution of India, official digital archives and the internet. Mostly descriptive and analytical methods are employed when discussing the subject.

Introduction

In Indian constitutional law, few legal battlegrounds are as severely contested as India's balancing act between cultural rights of the minority and state-driven egalitarian (or uniform to be precise) reform. At the core of this democratic paradox rests a deep tension between Article 25 of the Indian Constitution, which guarantees the fundamental right to freedom of religion, and Article 44, a Directive Principle allowing the state to secure a Uniform Civil Code (UCC). While proponents prefer a uniform secular code as a necessary vehicle for gender equality and national integration, critics argue that invoking plural personal laws risks minority identities and using legal uniformity as a weapon for cultural hegemony. As Shimon Shetreet (former Israeli Cabinet Minister and Professor at Hebrew University) observes in his book 'Uniform Civil Code for India', this pursuit of a unified civil architecture consistently intersects with complex inter-community disputes, requiring a delicate alignment between state intervention and local social practices. This friction is no longer a local legislative debate. Following watershed moments like the invalidation of triple talaq in *Shayara Bano v. Union of India* and the historic state-level enactment of

the Uttarakhand Uniform Civil Code, where Uttarakhand become the first state to Implement UCC, the discourse has transformed into a globally significant case study.

BACKGROUND

The Government of India Act, 1935 established the legislative and political foundation for the Directive Principles of State Policy through the INSTRUMENT OF INSTRUCTIONS issued to the Governor General of India and Governor of Provinces. Section 12 and 52 of this act explicitly mention these instructions and their consecutive sections mention them as 'Special Responsibilities' which meant that the Governor General or Governors could act in his own Individual Judgement whether to enforce these instructions as a legal code or not. The Responsibilities mentions explicitly about the protection of minority rights.

Before the framing of the Constitution started, The Sapru Committee (officially the called the Conciliation Committee), chaired by eminent lawyer and Liberal Party leader Sir Tej Bahadur Sapru, was appointed by the Non-Party Conference in November 1944 to break the deadlock between Congress and Muslim League. Tez Bahadur Sapru being a liberal himself found that there are two types of rights in the constitutions around the world. One was Justiciable rights which were enforceable in the court of law, followed in U.S.A and another was non-justiciable rights that were followed in Ireland and which were not legally enforceable in the court of law. Fundamental Rights were part of the Justiciable rights that talked about enforcement by the court of law, non-interference of the state in certain matters, providing freedom and liberty to the citizens etc. On the other hand, the DPSPs needed positive action from the state for betterment, welfare, development of economy, environment, society etc. Sir B.N RAU, the Constitutional Advisor to the Constituent Assembly later codified these rights structurally into the draft of the Constitution. "Preliminary Notes on Fundamental Rights" (September 1946): In this foundational working paper submitted to the Assembly, Rau explicitly draft-coded the separation. Clause 2 of his notes laid the exact baseline for what became Article 37: "The principles set forth in this Part are intended for the general guidance of the appropriate Legislatures and Governments in India... and shall not be cognizable by any court." B.N. Rau, Explanatory Memorandum on the Draft Constitution (October 1947): Upon compiling the final Draft Constitution of India (which contained 243 articles), Rau appended legal notes stating: "The Directive Principles are intended as moral precepts for the authorities of the State. They have at least an educative value." He even tried (and failed) to pass an amendment stating that DPSP-backed social legislation should override individual Fundamental Rights in court conflicts.

During the Constituent Assemble Debates, it was found that India at that time didn't have enough resources to have the positive rights that needed state action as Justiciable rights. So, it was necessary at that time to put these rights under Part IV as DPSPs which are non-justiciable in nature. But their non justiciability didn't mean they were to be left just as decorative element in some corner of the Constitution. According to the Chairman of the Drafting Committee of the Constitution Dr. B.R Ambedkar, mere Political Democracy in a country is hollow and unsustainable without Socio -Economic Democracy. Alladi Krishnaswami Ayyar (Drafting Committee Member) pointed out that no legislative assembly could completely ignore these mandates. He famously noted that "the court of public opinion" is far more powerful than any court of law. It means that any government in India that wants to remain in power or come to power can't form the government if these directions are ignored. Even today, the major manifestos of all the political parties revolve around these principles or directions that were included by our constitutional forefathers.

These are not mere non justiciable constitutional duties of the government rather they reflect the will, requirements, necessities, needs, aspirations, democratic and socio-political survival etc. of the people of this country. However, some members of the Constituent Assembly went a step ahead and demanded these rights to be made Justiciable in nature. Nasiruddin Ahmad (a member from West Bengal) said "I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made justiciable", "if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken on the 2nd of January."

K.T. Shah (Member from Bihar) delivered some of the sharpest critiques in the assembly, famously comparing the DPSPs to "a cheque on a bank payable only when the resources of the bank permit." He introduced multiple amendments demanding they be made fully enforceable by courts. The objective of this article is not to decide who were wrong or who were right or that whether the DPSPs had to be placed in Part III or Part IV of the Constitution. But after reading all the debates from the Constituent Assembly, we can clearly conclude one thing that DPSPs were of very high importance and not any less than the rights included in the Part III.

As Granville Austin says both Fundamental Rights and DPSPs are the 'Conscience of the Constitution' in his Book 'The Indian Constitution: Cornerstone of a Nation (1966)'.

The UCC Debate

The Unifor Civil Code is basically a legal codified plan or structure to establish a single, common set of civil laws governing personal matters such as marriages, divorce, inheritance, adoption and succession etc. for all citizens regardless of their religion. It is enshrined in Article 44 of the constitution under Part IV. It is a uniform law and applicable to all citizens. In the Constituent Assemble debates, K.M Munshi argued that personal matters are secular matters and not religious mandates thus they must be separated from religion to build a modern democracy. He also argued that even modern Islamic Nations like Turkey and Egypt had successfully codified their personal laws without destroying their faith.

Members like A.K Ayyar argued that codification of a uniform law like UCC is necessary as separate laws prevents India from becoming a unified nation. However, members like Mohammad Ismail Khan contended that personal laws are inextricably woven into the fabric of community's religion and enforcing uniformity would directly violate freedom of conscience. He also warned that forcing such law on a minority group right after Partition would breed deep mistrust. It is a question of inquiry that how a uniform law that have to be uniform for all could challenge the religious fabric of a minority group and breed deep mistrust? If Secularism is a fundamental principle of Popular multi ethnic democracy like India and a Basic Structure as defined by Supreme Court of India in the Kesavananda Bharati Judgement, then what is stopping India to formulate a socially uniform and Inclusive code for all people regardless of their religious backgrounds? K.M. Munshi argued on 6 December 1948: "We are in a stage where we must secularise our social life... There is no necessity for a religion to have these civil laws... If these matters are not brought within the purview of standard legislation, the progress of the country will be blocked."

Article 25(1) guarantees freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. It is clearly a negative right i.e. it demands state inaction so that individual freedom can strive. This clause acts as a shield against the State. It essentially tells the government, "You must NOT interfere with an individual's personal conscience or religious practices."

While on the other hand Article 25(2)(a) states that (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. It means that this clause represents a positive intervention from the part of the state and acts as a constitutional firewall, ensuring that the right to freedom of religion cannot be used as an absolute shield to block progressive civil laws or social engineering. However, it talks about secular intervention and not sacred intervention, which means rituals, way of practicing faith, rituals which are sacred etc can't be intervened by the state rather those socio economic and political outcomes related or caused by the impacts of the religion can however be intervened thereof. Therefore, the State possesses absolute legislative competence to unify these secular civil laws under Article 44 without encroaching upon core spiritual freedoms.

Dr. B.R Ambedkar on 2nd December 1948 in the Constituent Assembly Debates said that it is not necessary that secular fields should be governed by religion. In Europe there is Christianity, but Christianity does not mean that the Christians all over the world or in any part shall have a uniform system of law of inheritance.

If critics argue that a state-enacted UCC violates Article 25 (Freedom of Religion) or Article 29 (Protection of Minority Culture), they are relying on Article 13 to invalidate it. By identical logic, if an uncoded or codified personal law violates Article 14 (Equality) or Article 15 (Non-discrimination on grounds of sex), it must face the exact same constitutional test. A legal system cannot logically hold that the Constitution is supreme over a legislative UCC but subordinate to personal laws.

For instance, if a personal law treats a female member of a religious community unequally regarding marriage, inheritance, or divorce, that individual's personal fundamental rights under Articles 14, 15, and 21 are being actively violated by the enforcement of that personal law. Freedom of religion (Article 25) cannot be used by a religious community to tyrannise or deny basic civil rights to its own individual members. And this being a uniform code must be applicable to all individuals regardless of their religion. There is no question of majority or minority issue here.

Judicial Activism in religious matters.

In the famous Shah Bano Case of 1985, that had already cleared the path of primacy of human dignity and civil values over orthodox personal laws and where a 5 Judge Bench led by the then Chief Justice of India Y.V. Chandrachud established the principle that secular, public welfare laws override discriminatory or restrictive religious personal laws. After which the Rajiv Gandhi government in pressure had to formulate the Muslim Women (Protection of Rights on Divorce) Act, 1986. It was drafted by the then Union Law Minister Ashoke Kumar Sen. The act in brief said that in case of divorce, reasonable and fair protection on maintenance has to be given by the husband. Inserting the words "Reasonable" and "Fair" was a great political masterstroke played by the Rajiv Gandhi government as it was not defined in the law and thus made the law subjective in nature and applicable according to situational needs.

The Sabarimala Case (2018): The Supremacy of Constitutional Morality where Supreme Court struck down a traditional rule that banned women of menstruating age from entering the Sabarimala temple of Lord Ayyapa. Constitutional Morality Trumps Religious Freedom: The Court held that "constitutional morality" (the values of justice, liberty, equality, and fraternity embedded in the Constitution) forms the bedrock of Indian democracy. Religious freedom under Article 25 is explicitly subordinate to constitutional morality.

The Constitution must be read as an integrated, organic whole. Article 44 explicitly directs the State to secure a Uniform Civil Code for all citizens throughout India. Under the principle of Harmonious Construction, one part of the Constitution cannot be used to completely obliterate another. Article 44 is not an antagonistic threat to Article 25; rather, it is the execution of a constitutional mandate designed to foster national integration and equal citizenship.

The Supreme Court has consistently held since the Shirur Mutt case (1954) that the Constitution protects only those practices that are essential and integral to a religion—not every secular activity associated with it. To qualify as an "essential practice," the community must prove that the religion would completely lose its character or cease to exist if that practice were removed. Matters of marriage, divorce, maintenance, and succession are civil and social contracts, not theological imperatives. A change in the legal age of marriage, a uniform procedure for divorce, or equal property shares for daughters does not alter a person's core spiritual faith, their method of worship, or their relation to the divine. Therefore, regulating these secular aspects via a UCC does not infringe upon the core identity protected by Article 25.

Sarla Mudgal v. Union of India (1995) is a landmark Supreme Court judgment that directly addresses the intersection of religious conversion, bigamy, and the necessity of a Uniform Civil Code (UCC) under Article 44. The case arose from multiple consolidated petitions. In the primary petition, a Hindu man married under the Hindu Marriage Act, 1955—which enforces strict monogamy—converted to Islam solely to contract a second marriage with another woman. By doing so, he bypassed his legal obligations to his first wife, assuming that conversion to a faith that allows polygamy would grant him immunity. The Court held that a marriage done under the Hindu Marriage Act remains valid until it is formally dissolved by a competent court decree by that Act. A unilateral change of faith cannot nullify a statutory marital contract or destroy the legal rights of the non-converting spouse. Justice Kuldip Singh noted that the lack of a Uniform Civil Code creates legislative loopholes that individuals exploit to commit fraud against women. The Court requested the Government of India, through the Prime Minister, to "retrieve Article 44" and enforce a UCC to prevent personal laws from being misused.

Conclusion

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993 also clearly subjects its signatories to end all form of violences against women that also includes marriage and family relation or socio religious status of women which are clearly civil and secular in nature. Under the Principle of Harmonization of the Constitution with International Law (as used in *Visakha vs State of Rajasthan*), time has come that India adopts a proper legal rational Uniform Civil Code backed by modern scientific human centric and civilised values and principles and not biased towards any religion or not favouring any religion supported by the democratic will of the country and scientific temperaments of its citizens and law makers.

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