

The debate on the UCC started with the framing of the Constitution and has been kept alive by judiciary as well as political class. The issue has again been brought at the forefront of public debate with the recent judgment in Shyara Bano case, which invalidated the triple talaq. This has also coincided with the Law Commission inviting public consultation on UCC in Oct 2016. But, before we move to the nuance of Uniform Civil Code in context of multi-cultural polity of India, we should begin by understanding the constitutional, judicial and the political history of UCC debate. We begin by looking at how the framers of the Constitution debated UCC in this first part of the 4 part series on UCC.

The story of the Uniform Civil Code in the Constituent Assembly begins at the committee stages of the Indian Constitution making process. The Sub-Committee on Fundamental Rights was tasked with drawing up a list of fundamental rights that were to be incorporated into the Constitution of India. An initial step that the sub-committee took was to request its members to come out with their own personal drafts of fundamental rights. In the submissions of Ambedkar, Munshi and Minoor Masani, we find provisions that call for the adoption of a uniform civil code. Around the same time, members of the sub-committee were toying with idea of splitting fundamental rights into two parts : justiciable rights and non-justiciable rights. As the terminology suggests, the former would be enforced by courts whereas the latter would not be.

After a couple of sittings, the sub-committee submitted its report to its parent committee- the Advisory Committee – with a list of fundamental rights – split into two parts. The uniform civil code founds itself in the second part – the non-justiciable fundamental rights. It seems like the majority of the subcommittee felt that the uniform civil code provision was best incorporated as a non-justiciable right. Not all members of the Sub-committee agreed with this decision. In a dissent note to the report – three members – M.R Masani, Hansa Mehta and Amrit Kaur expressed their views on the uniform civil code as being non-justiciable in the following way:

“ One of the factors that has kept India back from advancing into nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period 5 to 10 years..’

The dissent note then goes onto demand that the Uniform civil code be put into the justiciable part of the fundamental rights.

About a year and a half later, Ambedkar on the 4th of November, 1948 presented the Draft Constitution to the Constituent Assembly for deliberation. The uniform civil code provision found its place in the Directive Principles of State Policy as Draft Article 35. The text of Article 35 went like this “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India’

On 23rd of November 1948, the Constituent Assembly took up this provision for discussion.

The Muslim members of the Assembly took a lead in this debate and proposed amendments which aimed to do 2 things: 1) introduce provisos to Draft Article 35 such that personal laws are kept out of its scope and 2) operationalize the uniform civil code only with the prior assent of the community in question.

Muslim members who made important interventions in the debate and opposed the uniform civil code were: Ismail Sahab, Nazzirudin Ahmad and Pocker Sahib Bahadur. The arguments they put forth consisted of the following:

1. That uniform civil code provision violated the freedom of religion provisions of the Draft Constitution.
2. The uniform civil code would create disharmony within the muslim community
3. No interference must take place in the personal law without the approval of religious communities.

Pocker Sahib Bahadur went further and attacked the constituent assembly in strong terms :

“Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?”

K.M. Munshi, Alladi Krishnaswamy and Ambedkar took part in the debate and defended the uniform civil code.

KM Munshi made the following points:

1. that the uniform civil code was important for unity of the nation and also for upholding the secular credentials of the Indian Constitution.
2. Till now the debate seemed to be around muslim sentiments. Munshi argued that That even hindus were insecure about this provision. He asked the members of the Assembly : How was any reform possible in the hindu society – specifically with regards to the rights of women – if there was no uniform civil code.
3. Munshi asked the muslim members : What was inheritance/marriage etc. got to do with personal law?

Alladi Krishnaswami Aiyar then joined the debate.

1. He responded to the argument made by muslim members that the uniform civil code would bring about disharmony. He suggested that the UCC would do the opposite – it would in fact create amity among communities. He further paid emphasis on the ability of the UCC to bring about unity in the country.

2. Alladi then asked the muslim members why there were there were no protests when the british interfered with muslim religious practices by bringing about a uniform criminal code?

At this point, Ambedkar came into the debate:

1. He further emphasised Alladi's point about there was nothing new about the uniform civil code. There already existed a common civil code in the country except for the areas of marriage, inheritance – which are the main targets for the uniform civil code in the Draft Constitution

2. He reminded the Constituent Assembly that the uniform civil code was only optional. By virtue of it being in the Directive Principles, the state is not obliged to immediately bring the provision into effect. It can do so when it wishes to. Responding to the initial amendments proposed in the debate – Ambedkar argued that the provision allowed future legislatures to legislate such that the UCC comes into effect only after the consent of communities was obtained.

Ambedkar's speech was the last intervention in the Constituent Assembly.

Soon after, Draft Article 35, was put to vote. The Constituent Assembly adopted the article which would later be re-numbered as Article 44 of the Constitution of India.

Lets take a step back.

Uniform civil code was a very controversial article during drafting of the Constitution – similar to the ban on cow slaughter and other provisions. The proceedings of the Constituent Assembly seem to indicate that the decision of placing the uniform civil code in the Directive Principles and not the fundamental rights was an act of compromise – between members in support and members in opposition. It was a way for the Constituent Assembly to defer the taking a decision and allow future legislatures to take a final call.

To read the debate in detail please use CLPR's CADIndia website – cadindia.clpr.org.in and type in 'uniform civil code' in the advanced search.

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In the next podcast in this series , we will look at important constitutional developments related to the uniform civil code in post independent with a focus on the Supreme Court.