

Bill No. 250 of 2018

THE UNIFORM CIVIL CODE IN INDIA BILL, 2018

By

SHRI CHANDRAKANT KHAIRE, M.P.

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BILL

*to provide for the constitution of the National Inspection and Investigation
Committee for preparation of Uniform Civil Code and its
implementation throughout the territory of India*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Uniform Civil Code in India Act, 2018. Short title,
extent and
commencement.
- (2) It extends to the whole of India.
- 5 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,— Definitions.
 - (a) "Uniform Civil Code" means the common civil code or common law for every citizen residing in India irrespective of religion and caste.

(b) "Committee" means the National Inspection and Investigation Committee constituted under section 3; and

(c) "prescribed" means prescribed by rules made under this Act.

Constitution
of the
National
Inspection and
Investigation
Committee.

3. (1) The Central Government shall, within a period of six months from the coming into force of this Act, constitute a Committee to be known as the National Inspection and Investigation Committee for the purpose of preparation of Uniform Civil Code and its implementation in the country. 5

(2) The Committee shall consist of—

(a) a Chairperson, who has been a retired Chief Justice of India to be nominated by the Central Government in such manner, as may be prescribed; 10

(b) the Union Minister of Home Affairs—*ex-officio* member;

(c) the Union Minister of Law and Justice—*ex-officio* member;

(d) two members who have been the retired Chief Justices of the High Courts, to be nominated by the Central Government in such manner, as may be prescribed;

(e) one member, to be nominated by the Central Government in such manner, as may be prescribed, from amongst persons of eminence having adequate knowledge and experience in law. 15

(f) one member, to be appointed by the Central Government in such manner, as may be prescribed, from amongst officers of the Indian Administrative Service - *ex-officio* Secretary; 20

(3) The Chairperson and the members of the Committee shall hold office for a period of three years.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and other members shall be such as may be prescribed.

(5) The Central Government shall provide such number of Officers and staff to the Committee, as may be necessary, for its efficient functioning. 25

(6) The Committee shall have the power to regulate its own procedure.

Functions of
the
Committee.

4. (1) It shall be the duty of the Committee to take such steps, as it may deem appropriate, for the codification and implementation of the Uniform Civil Code in the country.

(2) Without prejudice to the generality of the foregoing provision, the Committee shall ensure:— 30

(a) Uniform Civil Code in entire geographical territory of India;

(b) that the Uniform Civil Code is applicable for marriage, divorce, succession, adoption, guardianship and partition of land and assets on all citizens without any discrimination; 35

(c) right to equality as guaranteed under article 14 and prohibition of discrimination of any citizen on the basis of religion, Caste and gender is referred to under article 15 of the Constitution;

(d) gender equality in implementation of the Uniform Civil Code; and

(e) substitution of the personal laws (laws based on religious texts and traditions) by Uniform Civil Code. 40

Central
Government
to provide
adequate funds
to the
Committee.

5. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds to the Committee for carrying out the purposes of this Act.

6. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such direction, not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

5 Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

7. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

8. (1) The Central Government may, by notification in the Official Gazette, make rules
10 for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,
15 both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without Prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

In 1840, on the basis of *Lex Loci* Report, Uniform Law was framed for crimes, evidences and annexure but they left out some personal laws of the Hindus and the Muslims on purpose. On the other hand, the British Indian Judiciary had facilitated application by the British Judges under the English Laws. Besides, in those days many social reformers were voicing to make laws to do away with the discrimination against women done under the *Sati* and other religious customs.

In the Constituent Assembly, while on the one hand there were people like Dr. B.R. Ambedkar who desired reforms in the society and wanted to accept the Uniform Civil Code, there were also Muslim representatives who took side of retaining the Personal Laws based on religious enshrines. Due to this there was opposition of the Uniform Civil Code by the minority communities. As a result, regarding the Uniform Civil Code, only one line could be added as article 44 under Part IV as Directive Principles of State Policy in the Constitution. In this, it is stated that the State shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India. Since the Uniform Civil Code has been included in the Directive Principles of State Policy of the State, hence these laws cannot be implemented by the Constitution.

Besides, due to its political anomaly no Government showed proper will power to implement these constitutional provisions, because the minorities, especially the Muslims believed that the Uniform Civil Code will lead to the violation of their personal laws. Hence, only to compile the Hindu Laws, the Bills like the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Citizenship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 were passed which are collectively known as the Hindu Code Bill. In this Bill, alongwith the Buddhist, Sikh, Jain, laws related to different religious communities of the Hindus are included *vide* which the women have been given right to divorce and succession and caste has been termed irrelevant for marriage. Also, polygamy has been done away with.

In the present context, it seem our country is divided in three words in two classes on Uniform Civil Code, namely political, social and religious. In the *Shah Bano Case*, the Supreme Court decided that section 125 of the Indian Penal Code is applicable to all irrespective of religion, caste or community. The court directed that *Shah Bano* must be provided with living expenses. The then Chief Justice Y.V. Chandra said that Uniform Civil Code would end the dissimilarities in the Indian law which would help in establishing national unity. Hence, the Supreme Court had directed the Parliament to make law related to the Uniform Civil Code.

Sarla Mudgal Case Vs. the Union of India is the second example *vide* which the Supreme Court under article 44 had again directed the Government. The Supreme Court said that adopting Islam for marriage is a misuse of the personal laws. It said that a Hindu marriage can be dissolved only under the Hindu Marriage Act, 1955 which means after adopting Islam the marriage done thereafter cannot be dissolved under the Hindu Marriage Act and it is a crime under section 494(5) of the Indian Penal Code.

In *John Vellamettam Vs. Union of India*, the Supreme Court declared section 118 of the Indian Succession Act, 1925 as unconstitutional. Justice Khare said, "It is mentioned in article 44 that the State of India will strive to provide Uniform Civil Code to all citizens in its entire. But it is said that article 44 as mentioned in the Constitution has not been implemented properly. But the Uniform Civil Code would help in establishing national integration by avoiding contradictions on the grounds of ideologies."

The decision to implement the Juvenile Justice (Care and Protection of Children) Act seems to be a step towards Uniform Civil Code since this Act permits the people of Muslim community to adopt children whereas Muslims are not permitted or allowed to adopt children

under their personal laws. The Supreme Court has again asked the Government to implement the Uniform Civil Code so as to end gender inequality and wrong traditions prevalent under the personal laws.

Under the Uniform Civil Code a collection of laws will be prepared which will protect the personal rights of all citizens without considering the religion, which seems to be the need of the hour. In reality this is the foundation stone of the secularism. Such progressive reforms will not only help to end discrimination against women but also help in strengthening the secular structure and encourage integrity. In fact our social system is replete with injustice, discrimination and corruption and are in conflict with our fundamental rights, hence it needs to be reformed. As we know that there is Penal Code in our country which is equally applicable to all without considering the religion, caste and domicile. But there is no uniform law in our country with regard to divorce and succession and these subjects are controlled by the personal laws. Hence the Uniform Civil Code should be ensured to all citizens residing in areas where the population of entire geographical area resides.

Hence this Bill.

NEW DELHI;
November 20, 2018.

CHANDRAKANT KHAIRE

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of the National Inspection and Investigation Committee. It also provides for the salary and allowances of the Chairperson, members, officers and staff of the Committee. Clause 4 provides that the Committee shall take steps for codification and implementation of the Uniform Civil Code in the country. Clause 5 provides that the Central Government shall provide adequate funds to the Committee. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore would be involved from the Consolidated Fund of India per annum.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules relate to matters of detail only, the delegation of legislative power is of a normal character.

LOK SABHA

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(Shri Chandrakant Khaire, M.P.)