
THE ILLUSION OF UNITY: A CRITICAL ANALYSIS OF THE UNIFORM CIVIL CODE IN MULTICULTURAL INDIA

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ABSTRACT

The Uniform Civil Code, enshrined in the Constitution of India, seeks to establish and empower unity at the cost of diversity. The idea of establishing one gateway for all is not inherently flawed; however, under the veil of unity, there is a significant risk involved in encroaching upon the personal laws of India, which exhibit the multicultural composition of India. The presence of UCC in the Constitution of India is abstract and non-justiciable. The inclusion of UCC under the directive principles of state policy, rather than as a fundamental right, has clearly been beneficial to society at large. This approach has been beneficial in avoiding personal law disputes, and moreover, the damage such a civil code could have inflicted on the religious and personal sentiments of the people. The way forward is to preserve the abstract character of the UCC and fortify the enforcement of personal laws, which also serves the purpose of the UCC, to establish and empower unity in the nation. This manuscript essentially delves into the complexities of enforcing the Uniform Civil Code as envisioned, puts forth the possible violations of personal rights and rituals, and lastly proposes to enforce the underlying unity of the UCC, but taking a different approach.

INTRODUCTION

The Uniform Civil Code, as enshrined in Article 44 of the Constitution of India, is based on the concept of ONE NATION ONE LAW. The key focus behind the enforcement of the civil code is to establish a single law, that will apply to all the citizens of the nation irrespective of their religion, caste, culture, gender. The objective behind the inclusion of this principle is to promote unity among the citizens, irrespective of their religion and to decelerate gender and caste based discrimination with respect to personal laws of the citizens. India, being a multicultural democratic nation, is important to analyse and rectify the various repercussions that a singular law could have in a multicultural society. The object behind the Code is not disintegrating; i.e, to promote unity and discard discrimination with respect to personal laws of the citizens which have been shaped by long-standing prejudices in the society. But the approach sought after its enforcement by nullifying the personal laws of citizens is subtly blemishing the multicultural character and the mutual respect towards each other's communities in India. Establishing a single, uniform civil code for the entire nation might contribute towards achieving unity, but only at the cost of respect for diversity, which is the backbone for the functioning of our nation. It is pertinent to note that India is regarded as the Union of India, meaning that the nation is unified by the mutual respect that is awarded to the diverse cultures and religions of the citizens. Our nation is bound together by the freedom to practise, profess and promulgate any religion of their choice based on their personal beliefs and hence follow their personal laws owing to such beliefs and their representative community. By enforcing the UCC, it intrudes and overrides the personal laws of the citizens belonging to different cultures and religions, overtly diminishing the diverse fabric of our nation.

India is home to six major religions: Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism and 80 ORPs (other religions and persuasions). Moreover, above 7000 castes and communities reportedly exist in the nation. India is, without any hesitation, the most diverse nation in the world and subjecting the citizens of the nation to one law with respect to personal matters should be utterly disregarded. Minority communities shall be at risk of being overlooked, leading to the gradual erosion of their cultural practices, which constitute the very foundation of their identity. Implementing a single law to apply to all the citizens cannot be entertained, as such an action puts cultural diversity and identities of various communities at risk. The country's unity, which has been upheld and promoted throughout the 78 years of Independence by respecting, upholding, and preserving the diverse practices and cultures of

the citizens, should not be compromised by the abstract idea of obtaining unity by disregarding the respect for personal laws of the citizens. By formulating a single law to apply to the entire cultural fabric of India, the statesmen need to understand that it does not glorify the unity of the nation, but puts such unity at risk of being eroded, given that such a law erodes the very foundation of unity; i.e, respect for diverse communities and their practises. Moreover, the concept of the Uniform Civil Code is often politicised, putting this sensitive topic at the risk of being used for a political agenda rather than for reforming the personal laws of the citizens. A political faction might be inclined towards a community or show inherent abhorrence towards another; such a situation erodes the possibility of Unity with respect to the implementation of the law as well as the provisions contained therein. The minority communities put themselves at risk of being excluded with respect to their practices and beliefs in connection with their personal matters, completely depleting their identity and subjecting them to a subjugating law. This, in turn, corrupts the fundamental rights of citizens, which could have the possibility of covertly disintegrating the unity of the nation and ultimately defeating the object of the code.

HISTORY OF UNIFORM CIVIL CODE

The Uniform Civil Code was a result of the report by the subcommittee on fundamental rights. The panel was vested with the job of formulating fundamental rights of two types: justiciable and non-justiciable. The Uniform Civil Code was placed in the latter category owing to its sensitive and controversial nature. In the formative stage of the code, it was placed under Article 35 of the draft constitution of India bearing the text “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. The provision fanned the flames of discontent, especially among the muslim members of the assembly voicing their concerns mainly about the intrusive nature of the provision into personal laws of the religion.

The muslim members, notably Muhammad Ismail Sahib, Naziruddin Ahmad, Mahboob Ali Baig Sahib Bahadur, B Pocker Sahib Bahadur and Hussain Imam, put forth their amendments towards Article 35 of the draft constitution, in opposition to the Uniform Civil Code. They endeavoured to establish that the Uniform Civil Code, if enumerated in the original constitution, must have a provision to keep the personal laws of citizens out of the scope of interference. This view was taken by the muslim members to coherently prevent the interference of the code with muslim laws, as the provision would allegedly cause disharmony amongst the muslim community. The code was defended vehemently by Dr. B. R. Ambedkar

and his associates, stating that it ought to be present in the constitution as the enforcement of the code, in the present or for future times, was only optional and at the discretion of the government in accordance with the circumstances that may arise therein. The chairman of the drafting committee further articulated his stance in support of the Code, stating that it shall be upon the future legislations to take up enforcement of the Uniform Civil Code at the consent of the communities, given that their personal laws and matters are involved. He said *“It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary”*. This stance, as articulated by Dr. Ambedkar, provides the constitutional space to reconsider the timing and manner of enforcing the Uniform Civil Code, implicitly acknowledging the sensitive nature of personal laws and the potential need for broad social acceptance.

After the debate on the code, Article 44 of the Constitution was established to include the Uniform Civil Code, having a non-justiciable nature. The next controversial instance of the Uniform Civil Code was in 1985 in the *Shah Bano Case*¹, which was related to the denial of maintenance of a muslim woman who got divorced by her husband after 40 years of marriage. The court granted the relief of maintenance to the woman and upheld that fundamental rights override arbitrary personal laws. Within this instance, the court resurrected the controversy of the Uniform Civil Code, and stated that it has the power to encourage and establish gender equality.

Through this landmark judgment, the Supreme Court set the tone for the enforcement of the Uniform Civil Code, but fell short in proclaiming the proposal of reforms within the muslim law rather than establishing a singular civil code applicable to all. The emphasis placed on religion-based reforms is not earmarked compared to the establishment of the Uniform Civil Code in the country.

CRUX OF THE UNIFORM CIVIL CODE

In simple terms, the principle is based on the notion of One Nation One Law. One law shall be

¹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

drafted to be applicable to all citizens in disregard of their religion, and their personal laws and principles. The notion is based on obtaining and escalating unity amongst the citizens of the nation by removing the barrier of religion-based personal laws in areas of marriage, inheritance and succession, etc. With respect to matters of marriage, inheritance and succession, citizens are governed by their own personal laws and rules in accordance with their religion. The Hindu community is governed by the Hindu Marriage Act, the Hindu Adoption and Maintenance Act, the Hindu Minority and Guardianship Act and the Hindu Succession Act. This quartet of laws is applicable only to Hindus and excludes everyone else unless explicitly mentioned. The Hindu Laws were codified in 1955 and 1956, including major reforms within the laws to be applicable to them in their personal matters. Moreover, the codification of laws allowed citizens to enforce their rights in the court of law without any discrepancy, and upheld the spirit of the law with regard to personal matters of Hindus.

The muslim citizens of India are governed by their own laws, divided and subdivided into sects based on their religious canons. Muslims in India are largely governed by Sharia law and its interpretations that apply to different sects of muslims in a varied manner. Personal laws of muslims are largely uncoded and governed by their religious texts and interpretations. The non-codification and lack of reforms within the community have played an important role in affecting the pursuit of gender justice and equality of muslims.

Other religions, such as Christianity, Parsis, Sikhism, Buddhism, and Jainism, are governed by some secular laws, such as the Special Marriage Act, and their respective laws for marriage. This classification and freedom of application of personal laws has enabled the peaceful cohabitation of citizens in India, whilst maintaining the unity among the social fabric of the nation.

The enforcement of the Uniform Civil Code in India ultimately seeks to nullify the diverse personal laws with a single, unified legal framework that applies equally to all citizens, regardless of their religion. This means that such civil code will ensure that the rules of marriage applicable to Hindus will be applicable to Muslims also and vice versa. This level of applicability poses a concern of dispute among the communities. Balancing India's vast array of cultures with a single uniform law that caters to everyone is nearly impossible, especially while safeguarding true religious rights and freedoms. Even if a uniform law is created, its applicability is tenuous given that it cannot apply to everyone in the same manner.

LEGAL UNIFORMITY AMID RELIGIOUS PLURALISM

The main constraint behind the enforcement of the Uniform Civil Code lies with the diverse character of the country, the presence of varied religions, cultures and their personal laws acts as a rightful deterrent against the Uniform Civil Code. It is our upheld principle of secularism to respect and regard all religions, cultures and their personal values in their truest sense. The respect we offer to each and every religion and their laws is commended throughout the world and cannot be let go at the cost of legal uniformity.

Religious pluralism refers to the peaceful coexistence and mutual respect of multiple religions within a society. In India, religious pluralism is protected and guaranteed by the Constitution of India through various provisions and state obligations. The Preamble affirms that the Union of India does not and shall not have an official state religion and preaches the principle of secularism. The Preamble reads “*We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic and republic*”. The principle of secularism and respect for all religions has been upheld on multiple occasions, through judicial decisions and legislative actions. Respecting the personal laws of all religions with respect to marriage, inheritance, and divorce is an integral part of the secularism postulated by the preamble. In *S.R. Bommai V. Union of India*² and *Indra Sawhney V. Union of India*³, it has been explicitly stated that secularism forms part of the basic structure of the Constitution of India, and cannot be interfered with at any cost. This principle stands in utter violation, as it seeks to formulate a universal law intended to override existing personal laws in pursuit of a purported unity among citizens—an objective that is neither realistically attainable nor substantively justified.

Moreover, the preamble guarantees to ensure liberty of “thought, expression, belief, faith and worship” to all citizens. This guarantee ought to be interpreted with regard to religious pluralism to ensure that all religions and their values are upheld in India and, moreover, respected in full disclosure. The liberty of belief, faith, and worship is inextricably linked to personal matters such as marriage, inheritance, and divorce—domains in which this liberty must be preserved at all costs. With the proposed universal legislation, this cardinal principle stands at risk of being disregarded, as the very liberty guaranteed is threatened with

² S. R. Bommai v. Union of India, (1994) 3 SCC 1

³ Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217

suppression. It is pertinent to ensure that the religious pluralistic nature of India is upheld in its purest form, so that the citizens are bound together as a nation with unity.

VIOLATION OF CONSTITUTIONAL PROVISIONS

The implementation of the Uniform Civil Code may conflict with certain fundamental provisions of the Indian Constitution that hold paramount importance. The freedom of religion, to profess, practise, and propagate, is definitely at risk of being invalidated as such freedom could be replaced by unfounded legal stipulations.

Article 25 of the Constitution of India⁴ confers upon its citizens the fundamental right to profess, practise and propagate any religion of their choice, subject to such practice being within the standards of public morality. By implementing a universal law in the same regard, it utterly contradicts the spirit of Article 25 by depriving the citizens of their choice to practise and propagate any religion. The freedom to profess any religion undoubtedly includes the freedom to hone religious practices pertaining to personal matters such as marriage, succession and divorce. In *Adi Saiva Sivachariyargal Nala Sangam v. State of T.N*⁵, it was held that *“Religion incorporates the particular belief(s) that a group of people subscribe to. Hinduism, as a religion, incorporates all forms of belief without mandating the selection or elimination of any one single belief. It is a religion that has no single founder, no single scripture, and no single set of teachings. It has been described as Sanatan Dharma, namely, eternal faith, as it is the collective wisdom and inspiration of the centuries that Hinduism seeks to preach and propagate. Hinduism encompasses wide expanse of beliefs, thoughts and forms of worship without any divergence or friction within itself or amongst its adherents. Image worship is a predominant feature of Hindu religion”*. In such a religion as Hinduism, being considered the oldest and the most sacred religion in the world does not have the rule of singular practice owing to its varied respected beliefs within the religion and major divisions of subsects within Hinduism. Subjecting the citizens that follow the most celebrated religion in the world to a universal law, that seeks to disregard the existing practices of their religion results in first-hand defying the divine and cultural heritage of the religion. The same problem exists with the other major religions in India; i.e, Islam is further divided into two major groups, both having different practices to honour their religion. Hence, paying disregard to the existing sub-

⁴ India Const. art. 25

⁵ *Adi Saiva Sivachariyargal Nala Sangam v. State of T.N*, (2016) 2 SCC 725

practices of the various religions in India cannot be considered to offer a practical solution towards legislative unity.

It is also pertinent to note that the purposive interpretation of Article 14 of the Constitution⁶ could be in contradiction to the essence of the Uniform Civil Code, such that Article 14 intends to mandate equal treatment of equal persons, not unequal persons. The uniform civil code, as intended, will be a universal, singular law for all personal matters irrespective of religion, caste, sub-castes, and cultures. Such an enforcement applies in complete contradiction to the spirit of Art. 14, given that a law cannot apply to all in the same manner but needs to be applied to equals in the same manner and unequals in a different manner. Moreover, the law must meet the substantial criteria of Article 14 as stated by the constitutional bench in *Natural Resources Allocation*, in Special Reference No. 1 of 2012⁷. The bench held, *“Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution: the action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of the promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India”*.

The risk of destruction of the basic structure of the constitution is intelligible, as its core elements, including Art. 14, are at risk of violation by enforcing a universal law for all the citizens of India. Fundamental provisions embedded in Articles 25 and 14 of the constitution are not mere procedural guarantees but substantive principles of fairness, equity, and freedom of conscience. Any attempt to put them at risk of violation, without due regard for the vast social and religious differences amongst the citizens, may not only result in constitutional imbalance but also the erosion of unity and diversity. Therefore, the code's implementation without proper care and caution is not possible as the very ethos behind the code could be undermined.

In 2018, the 21st Law Commission reported in its consultation paper on “Reform of Family Law⁸” that a uniform civil code is “neither necessary nor desirable” at this stage. It was headed by former Supreme Court Justice B.S. Chauhan, who had emphasised particularly on cultural

⁶ India Const. art. 14

⁷ *Natural Resources Allocation*, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1 (India)

⁸ Law Comm'n of India, Consultation Paper on Reform of Family Law (No. 21st, 2018) (India)

diversity as the strength of India and cannot be compromised in the pursuit of uniformity. Moreover, the commission's views were inclined towards reform within the existing personal laws rather than formulating a uniform civil code to serve the same interests of gender justice and address discriminatory practices. Conversely, the Uttarakhand government in 2022 had promised the execution of a uniform civil code in the state in lieu of assembly elections and implemented the bill on January 27th 2025. Uttarakhand became the first state in Independent India to have a uniform civil code. The code vests itself with ambiguities for implementation, provides no clarity with regard to major provisions of the personal laws of Hindus, Muslims and Christians. The system concerning tier 1 and tier 2 of inheritance is nullified, undermining and deviating from the ethos delivered by the personal laws of each religion. Moreover, the concept of "Live-in relationships" is brought under the ambit of the code, but topics concerning the age and mandatory registration of the live-in relationship are left deviating from existing principles of law and mandates. Taking Uttarakhand as an example, it is clear that India's pillars of secularism and cultural diversity cannot be put at risk of destruction.

UNIVERSAL RIGHTS AND NOT A UNIVERSAL LAW

The repercussions concerning the formulation and implementation of a uniform civil code in contemporary India are distressing, especially concerning the cultural diversity of India. Through this paper, I seek to suggest the most suitable statutory measure to achieve the underlying goals of gender justice and to abhor discriminatory practices articulated by personal laws.

In lieu of the 21st Law Commission's consultation paper on "Reforms of Family Law", presented in 2018, the standpoint to implement a universal civil code in India ought to be suppressed. The commission preached for religion-specific reforms in personal laws rather than imposing a universal law that applies to all and nullifies the existing personal laws. The Commission emphasised that family laws of every religion should be reformed to ensure gender justice. It advocated for the uniformity of rights rather than imposing uniform laws, recognising the diversity of cultural practices while safeguarding equality.

Therefore, it is the uniform guarantee of rights that must be pursued comprehensively and systematically, rather than the rigid and potentially impractical imposition of a single, uniform law. Ultimately, both approaches aim to uphold equality, but the former does so through inclusion and sensitivity to diversity.