
UNIFORM CIVIL CODE IN A DIVERSE INDIA

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ABSTRACT

The Constitution of India was enacted and implemented in the year 1950. Subsequently, Article 44 has remained dormant, as no governing body has had the requisite courage and sagacity to engage with its provisions. Metaphorically speaking, it has remained an obsolete or ineffective concept. The present unfortunate circumstances undoubtedly submerge the essence of the constitution to a significant extent. According to Article 44, the state is committed to making efforts to establish a Uniform Civil Code (referred to as the UCC henceforth) applicable to all citizens across the nation. If passed, the civil code would address the private laws of all religious groups concerning marriage, divorce, adoption, child custody, inheritance, succession to property, and other matters that are secular in nature and would strengthen the bonds of unity among Indian citizens by giving them access to a set of personal laws that uphold humanism's core principles. There is a prevalent lack of understanding surrounding the concept of bigamy within the context of Islam. Paradoxically, several Islamic nations such as Syria, Tunisia, Morocco, Pakistan, and Iran have enacted legislation to codify personal law, specifically addressing the practice of polygamy. These legal frameworks aim to either completely outlaw or significantly restrict polygamy, with the intention of preventing the exploitation and abuse associated with this controversial practice. It is lamentable that India, a secular nation, is falling behind in extending a warm and inclusive reception to individuals expressing their opinions and ideas.

Keywords: Uniform Civil Code, Religious Minority, Diverse India, Fundamental rights

1. Introduction

The Uniform Civil Code (Hereinafter, “UCC”) is a matter of great discussion and deliberation in India especially in the context of it clashing with the fundamental rights of minorities in India and the current government possibly presenting the UCC bill in the parliament in upcoming months. In a layman’s term, UCC basically refers to the notion that there should be a standard set of rules or provisions covering personal laws involving marriage, divorce, adoption, and inheritance for all citizens alike, independent of someone's faith or cultural upbringing. The promotion of empowerment among all citizens and the pursuit of gender equity are key objectives underlying the implementation of the Uniform Civil Code in India. There is little room for argument on the desirability of implementing the Uniform Civil Code (UCC). The process of concretization is contingent upon the establishment of a social climate by the societal elite and statesmen among leaders, who possess the ability to mobilize the public towards embracing transformative shifts. The government led by Narendra Modi consistently advocates for the necessity of engaging in deliberative discussions and involving relevant parties and beneficiaries in the process of making decisions.¹

Once the Uniform Civil Code (UCC) is implemented, it will primarily function as a secular legislation that is non-religious in nature and offers several benefits. Personal law has an impact on both minority and majority groups. It is imperative for individuals to place their trust in democratic governance, which should duly consider and respect the religious principles and convictions held by all members of society. The enforcement of laws in India pertaining to the protection of religious minorities is comprehensive and consistent, hence ensuring sufficient safeguards for these communities. It is imperative for all communities to demonstrate a willingness to adjust and accommodate themselves in response to evolving circumstances.

If the Uniform Civil Code (UCC) were to be enacted, it would supersede all individual personal laws, establishing a uniform set of regulations applicable to all members of society. The notion of the Uniform Civil Code (UCC) is codified in Part IV of the Constitution, specifically addressing

¹ G-20 Bharat Presidency, https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/ebook/G20_Bharat_Presidency.pdf (last visited: 08/11/2023)

the Directive Principles of State Policy as outlined in Article 44². According to the terminology employed in Article 44, it is stipulated that the State shall make efforts to ensure the establishment of a Uniform Civil Code for all citizens across the entirety of India.

RESEARCH OBJECTIVES

1. To analyze the historical and constitutional evolution of the concept of a Uniform Civil Code in India, tracing its origins, key debates, and legal provisions, with a focus on understanding its relevance in a diverse and pluralistic society.
2. To examine the socio-cultural and religious implications of implementing a Uniform Civil Code in India, including its potential impact on personal laws, minority rights, and gender equality, while considering the diverse cultural and religious practices prevalent in the country.
3. To assess the feasibility and challenges associated with the implementation of a Uniform Civil Code in India, including the legal, political, and administrative hurdles, as well as public opinion and stakeholder perspectives, in order to provide a comprehensive understanding of the practical implications of such a legal reform in a diverse society like India.

RESEARCH QUESTIONS

1. How has the historical and constitutional development of the concept of a Uniform Civil Code in India evolved, and what are the key legal provisions and debates surrounding it, particularly in the context of India's cultural and religious diversity?
2. What are the socio-cultural and religious implications of implementing a Uniform Civil Code in India, and how might it affect personal laws, minority rights, and gender equality, considering the diverse cultural and religious practices prevalent in the country?
3. What are the feasibility, challenges, and potential solutions associated with the practical implementation of a Uniform Civil Code in India, considering legal, political, and administrative

² INDIA CONST. art. 44.

factors, as well as the perspectives of various stakeholders and public opinion, in a society as diverse as India?

RESEARCH METHODOLOGY

The research methodology for this doctrinal study primarily relies on the analysis of existing legal literature, including statutes, case law, scholarly articles, and relevant legal documents. The research involves an extensive review of legal provisions, historical developments, and judicial interpretations pertaining to the Uniform Civil Code in India. Comparative legal analysis with other jurisdictions may also be undertaken to draw insights. The methodology focuses on a systematic examination and synthesis of legal sources to provide a comprehensive understanding of the topic and its implications within the Indian legal framework.

2. Historical Background

The narrative around the Uniform Civil Code inside the Constituent Assembly originates from the committee phases of the Indian Constitution drafting process. The Sub-Committee on Fundamental Rights was assigned the responsibility of formulating a comprehensive catalogue of fundamental rights that were intended to be integrated into the Constitution of India. The sub-committee initiated the process by soliciting its members to individually produce preliminary drafts outlining the essential rights. The discussion surrounding the Uniform Civil Code (UCC) was presented to the Constituent Assembly in 1948 following the partition, hence transpiring amidst the aftermath of the tragic communal violence. Muslim individuals cited religious doctrines as the basis for personal laws and presented arguments opposing state interference. KM Munshi, Alladi Krishnaswamy Iyer, and B R Ambedkar contended that including it within the Directive Principles will effectively function as a guiding principle for instigating societal reform.³ Ambedkar maintained a steadfast belief that state engagement in the religious sphere was justifiable, particularly where such intervention served to advance the principles of social justice. According to his perspective, the absence of interference was deemed essential in order to facilitate any potential advancements.

³ Constitution of India, <https://www.constitutionofindia.net/articles/article-44-uniform-civil-code-for-the-citizens/#:~:text=Summary,triggered%20conflict%20in%20the%20Assembly>, (Last visited:08/11/2023).

The writings of Ambedkar, Munshi, and Minoo Masani contain proposals advocating for the implementation of a standard civil code.⁴ During a similar period, the sub-committee members were contemplating the notion of dividing fundamental rights into two distinct categories: justiciable rights and non-justiciable rights. As indicated by the wording, the former would be subject to enforcement by courts, while the latter would not be subject to such enforcement. Following a series of deliberations, the sub-committee duly presented its findings to its overseeing body, namely the Advisory Committee. The report consisted of a comprehensive enumeration of essential rights, which were categorized into two distinct sections. The unified civil code is included within the second segment of the non-justiciable fundamental rights. The prevailing sentiment among the subcommittee members is that the optimal approach for integrating the universal civil code provision is to treat it as a non-justiciable right. There was dissent among several members of the Sub-committee on the aforementioned judgment. In a dissenting memorandum appended to the report, three members, namely M.R. Masani, Hansa Mehta, and Amrit Kaur, articulated their perspective on the universal civil code, asserting its non-justiciability.

3. Legal Precedents And Contemporary Debates Regarding UCC

Following intense deliberations in the Constituent Assembly, the Indian lawmakers ultimately incorporated a compromise agenda into their 1950 Constitution. This agenda appeared to prioritize legal consistency and fostered an anticipation for the eventual establishment of a Uniform Civil Code. The aspiration for the future, articulated in Article 44 of the Indian Constitution of 1950 as a Directive Principle of State Policy, encompasses this broad policy objective.

The matter pertaining to the implementation of a unified civil code (UCC) remained inactive within the purview of the Supreme Court until 1985, when a significant ruling was rendered in the case of Mohd. Ahmed Khan v. Shah Bano Begum⁵. After Khan expelled his spouse, Shah Bano, who was 62 years old at the time, she initiated legal proceedings by submitting a petition in accordance with section 125 of the Code of Criminal Procedure. In her plea, she requested a monthly maintenance payment of ₹500. According to Islamic law, the husband has stated his

⁴ Vaibhav Purandare, *How the clause on UCC was rendered toothless*, THE TIMES OF INDIA, (Sep 6, 2017, 08:04), <https://timesofindia.indiatimes.com/india/how-the-clause-on-a-uniform-civil-code-was-rendered-toothless/articleshow/60385152.cms>.

⁵ Mohd. Ahmed Khan v. Shah Bano Begum, 1985 SCR 844.

obligation to provide a lump sum payment of merely ₹5400 to his wife. The court ruled that the scope of the term "wife" as defined in section 125⁶ encompasses both divorced wives and Muslim women, and consequently recognized her entitlement to receive maintenance. The Court further expressed that the implementation of a Uniform Civil Code (UCC) will contribute to the process of national unification by mitigating clashing legal ideologies and eliminating different loyalties. The Court emphasized the necessity of initiating efforts in this regard to ensure the Constitution's significance and relevance.

In the aforementioned year, the Court was faced with the case of *Jorden Diengdeh v S S Chopra*⁷, wherein the central issue revolved on the permissibility of annulling a marriage under the Indian Divorce Act of 1869 based on the grounds of impotence. The Court observed the absence of consistency across codified personal laws pertaining to divorce, specifically highlighting the disparity between the Hindu Marriage Act, which permits dissolution of marriage after one year of judicial separation, and the Indian Divorce Act, which does not provide for such provision. The Court perceived this particular instance as evidence, as stated by the Court, of the "completely unsatisfactory condition resulting from the absence of a standardized civil code." However, the court has delegated the responsibility of determining appropriate action to the Ministry of Law and Justice. The case of *Sarla Mudgal v. Union of India* pertains to a situation when a Hindu man embraced Islam in order to formalize his second marriage. The issue at hand is to the validity of the second marriage in the absence of dissolution of the first marriage. The court's ruling featured assertive declarations in support of a Uniform Civil Code (UCC). The UCC issue in India elicits strong divisions and polarization, wherein various prevalent and erroneous assumptions are perpetuated by proponents and opponents alike. One prevalent assumption that pervades discussions is that the prioritization of uniformity within a family law system is the paramount virtue, resulting in improved and more equitable outcomes for women. Researchers in this field have extensively challenged and weakened this notion. According to Flavia Agnes⁸, it is imperative to prioritize the establishment of an accessible and cost-effective justice system for women, rather than striving for legal conformity. Upon relinquishing the narrow perspective that

⁶ Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1973 (India).

⁷ *Jordan Diengdeh vs S.S. Chopra* 1985 AIR 935.

⁸ The Wire, <https://thewire.in/politics/interview-flavia-agnes-says-the-aim-should-be-the-uniformity-of-rights-rather-than-the-ucc>, (last visited:08/11/2023).

fixates our attention on the notion of homogeneity, alternative possibilities become apparent. One specific method, known as alternative dispute resolution (ADR), offers potential benefits in the context of family law conflicts. The constitutional mandate to adopt a Uniform Civil Code (UCC) does not exclude the use of Alternative Dispute Resolution (ADR), which has a well-established presence in India.

Critics of the Uniform Civil Code (UCC) express concerns with the potential presence of a negative undertone towards Indian Muslims in the discourse surrounding its implementation. Furthermore, they argue that a UCC might disproportionately represent Hindu customs and values, thereby disregarding the perspectives of other religious communities.⁹ There has been scepticism expressed by various individuals regarding the feasibility of engaging in a substantive public discourse on a Uniform Civil Code (UCC) given the prevailing lack of information about its specific provisions. It is indeed perplexing to consider the fervour and intensity with which this debate, centered around a code that lacks a consensus on its contents, is being conducted. Opponents of the implementation of the Uniform Civil Code (UCC) argue on grounds of religious freedom and the autonomy of minority groups. They express concerns about the potential for the UCC to result in coerced and repressive integration.

4. The potential clash between UCC and fundamental rights

Article 44, enshrined within the Indian Constitution, serves as a Directive Principle of State Policy, which initially established the policy objective of fostering a secular framework for nation building in the postcolonial era. The objective was to progressively attain a more comprehensive kind of equality for all individuals, as opposed to an immediate and instantaneous implementation. The attainment of justice was not readily accessible, but gradually became more attainable for the general populace. The constitutional provision of equality enshrined in Article 14¹⁰ of the Indian Constitution, while being regarded as a fundamental principle, did not automatically translate into tangible socio-legal outcomes. The Constitution's Fundamental Rights encompass various provisions that ensure equality. Article 14 establishes qualified equality, which is complemented

⁹ Rimjhim Singh, Uniform Civil Code: What is it and what are the arguments against it?, Business Standard, (Jun 15 2023 | 7:34 PM), https://www.business-standard.com/india-news/uniform-civil-code-what-is-it-and-what-are-the-arguments-against-it-123061500996_1.html.

¹⁰ INDIA CONST. art. 14.

by additional essential guarantees of basic equality outlined in Articles 15¹¹ and 16¹². These provisions empower the Indian state to enact specific protective measures for certain groups, including women, children, and historically marginalized communities. The aforementioned observations indicate a profound recognition that the enactment of new legislation does not instantaneously alter the state of affairs, and that the aspiration for equality is, at most, a distant objective rather than an immediately attainable socio-legal actuality resulting from a single legislative action.

According to Article 44 of Part IV of the Constitution, the state is mandated to make efforts towards the implementation of a Uniform Civil Code that applies to all citizens across the nation. Conversely, Part III of the Constitution encompasses Article 25¹³, which stipulates the guarantee of "Freedom of conscience and the unrestricted exercise, observance, and dissemination of religious beliefs." The primary conflict revolves around the two aforementioned articles. Over the past two decades, the Supreme Court has established a precedent that the Directive Principles and Fundamental Rights should be interpreted in a manner that promotes harmony. This principle has now become well-established law. The case of *ABK Singh v. Union of India*¹⁴, along with subsequent cases such as *Woman Rao v. Union of India*¹⁵ and *Griha Kalyan Kendra Worker's Union v. Union of India*¹⁶, clearly demonstrate the Court's commitment to adjusting the scope of fundamental rights in order to align with this trend. The responsibility of ensuring a Uniform Civil Code (UCC) for the populace of a nation lies with the state, and it possesses the unquestionable legislative authority to do so. Upon analyzing the provisions in question, namely Article 25 and Article 44, it becomes evident, without any semblance of uncertainty, that the purpose outlined in Article 44 does not infringe upon the principles of religious freedom and the guarantees provided in Article 25. According to Article 25, subclause (b) of clause (2)¹⁷, there exists an exception which states that any laws currently in place or to be enacted in the future, pertaining to social welfare and reform, must remain unaffected.

¹¹ INDIA CONST. art. 15.

¹² INDIA CONST. art. 16.

¹³ INDIA CONST. art. 25.

¹⁴ *ABK Singh v. Union of India*, AIR 1981 SC 298.

¹⁵ *Woman Rao v. Union of India*, (1981) 2 SCC 362.

¹⁶ *Griha Kalyan Kendra Worker's Union v. Union of India*, AIR 1991 SC 1173.

¹⁷ INDIA CONST. art. 25, § 2, cl. b.

5. The impact on minority communities and their rights to preserve their distinct cultural identities

Proponents of cultural relativism advocate for the safeguarding of longstanding traditions, highlighting the need for distinct religious communities to possess a unique legal framework that aligns with their particular customs and religious beliefs. It is widely held that these rules are intricately designed, with careful consideration given to the distinct requirements and customs of each community. Nevertheless, the occurrence of contentious cases such as the Shah Bano case in 1985 has prompted significant inquiries over the validity of prevailing personal laws. The Uniform Civil Code (UCC) has emerged as a significant subject of discourse within the realm of Indian politics, as it pertains to the imperative of implementing specific legislations that are applicable to all individuals, while also upholding their fundamental entitlement to freedom of religion. The current emphasis has primarily shifted towards the Muslim Personal Law, which encompasses provisions for unilateral divorce and polygamy, both of which are recognized as legally permissible under the principles of Sharia law. This discourse underscores the imperative nature of adapting legal frameworks in light of societal transformations, given that religious laws may no longer correspond with prevailing contemporary norms and principles.

Every community possesses a distinct array of traditions, practices, and religious beliefs that serve as the foundation for its individual legal systems. The act of imposing the traditions of a particular group onto others is widely regarded as unjust, as it has the potential to result in the assimilation of minority groups into the prevailing Hindu culture. This process undermines the fundamental values of cultural variety and autonomy. Critics contend that it would be more prudent to prioritize the resolution of other relatively less contentious matters that are presently confronting Indian society, rather than enforcing a standardized code that has the potential to destabilize the prevailing social equilibrium. Critics argue that the implementation of a Uniform Civil Code (UCC) may have the potential to erode cultural identities and damage the rights of minority groups.

Personal laws are intrinsically intertwined with religious convictions and are perceived as a mechanism by which communities uphold their unique cultural customs and traditions. Moreover, critics contend that there are already existing legal frameworks in place to safeguard human rights and handle societal responsibilities. For example, legislative measures that prohibit the practice of

child marriage, domestic abuse, or discrimination are universally applicable to all individuals within a given jurisdiction, irrespective of their personal legal frameworks. These overarching laws establish a fundamental policy aimed at safeguarding fundamental human rights and principles. Opponents of the Uniform Commercial Code (UCC) argue that the implementation of a standardized code would constitute unwarranted intervention, given that existing general laws already protect the fundamental rights and values that are upheld by society.

6. The practical challenges of legislative and social implementation in a nation

Regrettably, the assertion regarding the desire for UCC reflects a somewhat reductionist interpretation of the prevailing circumstances. The vast size and diverse nature of India necessitate sophisticated answers that cannot be readily transplanted from 19th century Europe. India must consider if achieving consistency in civil laws or reforming personal laws is necessary for the advancement of its modernization. India has encountered challenges in establishing a unified legal system for its citizens, as it has not been able to achieve consistency even within each religious community.

The existence of diverse personal laws has resulted in the politicization of the issue, making the implementation of a Uniform Civil Code (UCC) exceedingly challenging. The dispute on the requirement of a UCC is contingent upon the presence of a well-defined and comprehensive understanding of the UCC's intended nature and functionality. Despite advocating for the government to implement a Uniform Civil Code (UCC), the Supreme Court's own rulings expose deficiencies in its comprehension of the UCC. Uniformity may not provide a sufficient solution to the profound challenges posed by personal laws.

The implementation of legislative reforms in Hindu and Christian laws, along with the growing legal influence on Muslim law, has resulted in a heightened level of consistency across various personal laws. Furthermore, there exists a heightened level of discourse and disagreement inside communities, accompanied by a deliberate endeavour to initiate changes in family law from an internal perspective. Moreover, recent findings indicate that the association between gender inequality inside the family and socio-economic conditions is stronger than the influence of religious law. However, it is crucial to highlight that the recent focus on family law reform mostly

revolves around addressing issues such as domestic abuse, which have a significant impact on many group identities and concerns.

However, the successful implementation of the aforementioned initiative is contingent upon the government's level of motivation. If the government mandates the universal use of helmets when operating vehicles, it raises the question of whether Sikh individuals will be required to remove their turbans. If the government were to legalize abortion as a means of managing population increase, would Christians be inclined to endorse such a policy? If the government were to allow the slaughter of cows, would it not have a detrimental impact on the Hindu community? Therefore, it is imperative to approach this matter with caution. Religion holds significant emotional and religious significance within the cultural context of India. It is imperative for the government to engage in comprehensive stakeholder consultation prior to implementing any policy or acting. It is imperative for the Government to promptly undertake decisive measures to enforce the Uniform Civil Code, instead of engaging in prolonged deliberation for the sake of immediate political advantages. However, it is important to note that achieving results or making significant progress in any endeavour typically requires a sustained and consistent effort over a period, rather than being accomplished instantaneously. A methodical, deliberate, and compelling approach is vital, as the adage "justice delayed is justice denied" suggests that delayed justice can result in a denial of justice. Conversely, if justice is expedited without due consideration, it may lead to a suppression of justice. Regardless of the difficulty and duration of the undertaking, it is imperative for the legislature to exhaust all efforts in order to attain this constitutional aim. However, the implementation of consistent law should not compromise the balanced allocation of legislative authorities outlined in Article VII.

7. Suggestions

The prevailing patterns demonstrate the limited progress made in establishing a Universal Civil Code (UCC) and the significant magnitude of the effort that still lies ahead. Several recommendations are proposed in relation to this matter. Although the implementation of a uniform legislation is widely seen as advantageous, enacting it all at once may potentially undermine the unity and integrity of a nation. In a democratic society regulated by the principles of the rule of law, it is imperative to implement a process of incremental and progressive legal

reforms. The legal process has the capacity to rectify the negative consequences of imperfections, particularly when they are most severe, during several phases.

An enactment and immediate enforcement of a law pertaining to personal status, grounded in the almost similar principles found throughout all personal laws, can be pursued. It is recommended that a family law board be established inside the Union law Ministry, following the model of the corporate law board operating under the Ministry of Industrial Affairs. Further investigation is warranted to examine the factors contributing to the lack of efficacy in current family legislation, including the Dowry Prohibition Act, The Hindu Code, and The Dissolution of Muslim Marriage Act. The proposed resolution to the issue currently under examination entails the implementation of a temporary dual framework for family law.

The personal laws of religious communities should not be abolished entirely, but rather refined by removing any unacceptable elements. Alternatively, it is possible to establish a Uniform Civil Code (UCC) by drawing upon the most exemplary principles of contemporary family law and subjecting it to a vote. In the event that a significant proportion of individuals within a specific community actively support the adoption of a particular practise, it should be mandated for them. Conversely, if there is insufficient support, the community may be permitted to retain its distinct personal laws, which can be reformed and modernised as needed. If this dual system is indeed beneficial, the separate personal laws will naturally become obsolete over time. Therefore, the successful accomplishment of this mission, which results in the effective realisation of the concept outlined in Article 44, necessitates a prudent exercise of authority and a judicious allocation of resources by the governing State.

8. Conclusion

In conclusion, it is appropriate to assert that a secular India would benefit from the implementation of a unified Civil Code. However, it is important to recognize that imposing such a code on a populace that is resistant to change is not an immediate need. Most individuals are often unprepared to embrace secular legislation that deviates from religious traditions. The successful implementation of the Uniform Civil Code is contingent upon the attainment of enhanced literacy rates, heightened understanding about various socio-political matters, and the facilitation of lawful

dialogues, as well as increased social and religious mobility. The primary objective of implementing reforms to the Uniform Civil Code should be to uphold the principles of equality, national unity, and integrity, while also ensuring justice for both men and women. When adopting the Uniform Civil Code (UCC) nationwide, it is imperative to carefully consider the concerns of minority religious groups, particularly the potential fear and loss of identity they may experience within Indian society. The successful implementation of a Uniform Civil Law is contingent upon obtaining support and acceptance from all relevant parties and communities. Simultaneously with the enactment of the UCC, it is imperative to ensure that only contemporary legislation pertaining to aggressive behaviours are included into it. The mobilization of diverse religious communities, including Hindus, Muslims, Christians, and Parsis, towards this objective is expected to provide positive outcomes and mitigate opposition from fundamentalist groups.