

Uniform Civil Code in India: Issues and Challenges in Contemporary Era

Dr. Sharafat Ali,

Siddhartha Law College, Dehradun (Uttarakhand) ¹

Abstract

This research paper seeks to discuss and analyse the concept of a UCC in India. It considers both existing Constitutional provisions and existing cultural and religious contexts to assess if a UCC is needed or is merely a myth.

The analysis of the Uniform Civil Code explores the implications of it in India, its societal functions and shortcomings, and the importance of accepting a standardized framework of governing laws across the country. India's Constitution grants citizens the right to practice and profess their own religions, which has led to the existence of diversified personal laws amongst different faiths in India. The Constitution also suggests the formation of one Uniform Civil Code in India to serve as a basis for all personal laws, but the UCC has been met with much opposition. This paper aims to answer the debate of whether a uniform civil code is actually needed or if it is simply a myth that preaches uniformity while infringing upon religious freedoms. This paper will analyse the necessary measures that must be taken while implementing a UCC, the necessary changes that must be made, and analyse the looming debate of the Constitutionality of the idea. The paper will further focus on the potential advantages and disadvantages of the implementation of UCC in India, as such an extensive framework must be evaluated before it can be adopted and implemented.

The paper also explores current social perspectives towards a UCC, in light of the highly communalized political climate in India. It discusses the relevance of culturally based norms and values in a given society and the sensitivity required in bringing about any change to personal laws.

Keywords: Uniform Civil Code, Personal Laws, Constitution, Religious Freedom.

¹ Principal, Siddhartha College of Law, Dehradun

Introduction

The Uniform Civil Code (UCC) is a proposed set of provisions to create a single law for personal matters, regardless of an individual's religion, nationality, or gender. The UCC has been a topic of debate in India for several decades, with proponents advocating for its implementation for the sake of national unity, gender equality, and modernization. Critics, on the other hand, argue that the UCC would violate the fundamental rights of minority communities and impose a homogenized culture. This paper will examine whether the UCC is a need or myth and assess its potential impact on personal laws in India.

In this paper, a thorough analysis will be conducted to understand UCC better, consider the current scenario over the implementation of such a policy, features to be included in it, the challenges and implications, and most importantly will analyse the need for such a code and if it is required or just a myth in current times.

Comprehending Indian law and its current repercussions is essential for comprehending this topic, "Uniform Civil Code in India: A Comprehensive Study." The researchers used secondary data collection techniques. This study focuses on doctrinal method. In order to incorporate the various viewpoints of the many jurists, the researcher also used commentaries, books, treatises, articles, notes, comments, and small amounts of information from the internet and suggestions from my friends, which is the least comprehensive source. His goal was to present an exhaustive perspective.

3.0 Background

In 1946, during the election campaign were two major parties emerged. India's freedom was in reach. All-India Muslim League proposed Pakistan while Nationalist Congress Party, Congress, and Socialist Party agreed upon the common code of civil laws with applicable to all members of Indian society irrespective of caste, class, language, or place of origin.

The contemporary Indian legal structure is complex and primarily guided by personal laws. Personal laws are rules and principles that pertain to matters such as succession, marriage and divorce, adoption, maintenance, guardianship, and inheritance who are based on the culture

and customs of the different religious communities and tribes. In mid-19th-century the British colonizers, to maintain control over their subject it was best way for them was to not implement any uniform code, but to allow the different communities to continue practicing their personal laws, to make it easy for them to rule.

However, gradually the personal laws in India got consolidated into two primary rules of religious law; Muslim law based on Sharia and an umbrella of Hindu law focused on customs and traditions of the Hindu majority at the time. The Islamic Personal Law and Hindu Personal Law were both enacted and given the go-head of Indian judicial court.

The patriarchy has surpassed any significant alteration in the personal laws, either of which for the major part still remain in their very primitive form and are heavily influenced by centuries-old customs and traditions that have merely become relics of the history. Practices such as female infanticide, Sati, Halala, polygamy, including superstitions, child marriages have managed to slip through the cracks even in the face such changes in times and mindsets.

4.0 Uniform Civil Code and the Indian Constitution:

In an effort to uphold justice, liberty, equality, and fraternity, UCC was added as a Directive Principle of the State Policy (DPSP) in Part IV² of the Constitution in the year 1950, when India became a sovereign democratic republic. For many years, the UCC has been a contentious issue in India, with some saying that it would advance gender equality and secularism and others that it would restrict religious freedom. Marriage and inheritance, which are not covered by India's current common civil code, would be covered by the UCC. In Goa, where the UCC is in effect, husband and wife and all offspring, regardless of gender, are entitled to an equal distribution of income and property.

The practice of personal laws based on religion, caste, and gender has continued to this day, resulting in legal discrepancies and injustices. For example, polygamy is permitted in Islamic law, but it is illegal for non-Muslims. Moreover, Muslim personal law allows to marry with 15 years 15-year-old child, while the Hindu Marriage Act allows women to marry after attaining 18 years, which contempt the fundamental idea of Constitution article 14 which states equality among all the people.

² Article 44 of DPSP

5.0 Features of a Potential UCC

In view of different aspirations and expectations of the Indian population, neither a rightist nor a leftist model of civil law can suffice the needs of all its citizens. However, to ensure equality and justice to all, a potential UCC should incorporate features such as:

- **Marriage and divorce:** These laws should grant everyone the right to marry and divorce without any unfair bias against either gender. Marriages between men and women of different religious denominations should be allowed under the UCC.
- **Adoption and guardianship:** Laws regarding adoption should grant people the right to adoption without intercourse with religious or racial discrimination. Guardianship should be granted to those in need, irrespective of the social status of the individuals.
- **Inheritance and succession:** Succession and inheritance laws should grant people equal rights in regards to inheritance. This should be in accordance with their contributions to the family, and their rights in their parent's property should be set in stone regardless of their gender.
- **Maintenance and related responsibilities:** Maintenance laws should grant all those in need, men and women, financial assistance when needed. Other related responsibilities should also be enshrined within the feature, such as child support, alimony and amounts to be paid for the betterment of one's dependents.

In **Shah Bano Case**³ (1985) 75-year-old Shah Bano living in Indore, Madhya Pradesh, had sought maintenance from her former husband, who had divorced her almost five years ago. She said her former husband, a wealthy businessman, should to continue to give her a monthly payment after the divorce. Her former husband argued that he had already given her the full amount of consideration money at the time of the divorce, and so he was not liable to pay her anything more.

The Apex Court held that Section 125⁴ of Code of Criminal Procedure is a secular provision and will apply to all women irrespective of religion. Verdict ruled in favour of Shah

³ AIR 1985 SC 945; 1985 (2) SCC 556

⁴ S. 125. Order for maintenance of wives, children and parents:

(1) If any person having sufficient means neglects or refuses to maintain-
(a) his wife, unable to maintain herself

Explanation- For the purposes of this Chapter- "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

Bano and ordered her former husband to pay maintenance. This decision was criticized by religious conservatives and right-wing politicians, who argued that Indian law should give Muslim women the right to maintenance under the Muslim Personal Law. They argued that the court's ruling did not take into account the Islamic principles of the Muslim Personal Law that provided for the prolonged alimony of divorced wives.

In response, the Government of India passed the “*Muslim Women (Protection of Rights on Divorce) Act, 1986*”, reversing the court's ruling and exempting Shah Bano's former husband from paying maintenance. This sparked public controversy, leading to much criticism of the government's action harshly terming it a violation of judicial supremacy. The act, however, was eventually upheld by the Hon'ble Supreme Court in its Sarla Mudgal case in 1995. The court held that the matters of personal law could not be challenged on the basis of fundamental rights.

6.0 Implications

The implementation of a uniform civil code (UCC) has far-reaching implications on the revival of traditionally accepted practices that create social imbalance and injustice. UCC has been in the centre of legislative talks for a good few years now, yet the enactment affected due to mass opposition from political and religious groups.

The politicizing of the UCC will have far-reaching consequences on the overall functioning and well-being of the minority social class that are not granted sufficient protection via the already present personal laws. The fear of a Uniform Civil Code dominates the general opinion of people when it comes to social justice, as some people believe that this will lead to the snatching away of their rights and privileges as society members.

The enforcement of a uniform law such as the UCC has the potential to create serious rifts between the general populace and the government, due to its inconsiderate nature. Instead of implementing it abruptly, a better approach would be to provide gradual transition and protection to the population to ensure any potential backlash is minimal.

In the case of **Daniel Latifi vs Union of India**⁵ (2001), the Apex Court held that the scope of Article 44, which calls for a UCC, is limited to "persons belonging to different

⁵ (2001) 7 SCC 740

religious communities". It also held that, since the subject matter of a UCC was listed as a Directive Principle, the court cannot enforce it in the direct proceedings. The court further held that it was the State's obligation to act towards realization of the Uniform Civil Code, which should be brought into force through statutory laws passed in the Parliament.

The Court also observed that such a code cannot cover all aspects of a personal law and that the degree of uniformity should depend on the circumstances. Lastly, it was suggested that there should be a genuine effort to bring about a UCC in the country, but this must be done in a spirit of mutual respect and tolerance between different communities.

In the case of **John Vallamattom v. Union of India**⁶ (2003), Apex Court held that the obligation of the State of India under Article 44 of Constitution mandating the passage of a UCC does not infringe on any one particular religion. The Apex Court held that seeking to establish a UCC did not infringe on the freedom of religion of Indian citizens as it is a matter "pertaining to the secular aspect of governance and its object is to provide a uniform set of secular civil laws to all citizens of this country". The Court further recognized that different religions have their own norms and practices, but nevertheless maintained that the State must strive to make reasonable efforts to provide a UCC, in "the larger interest of national integration and to remove any confusion arising from the continued existence of diverse personal laws". The Court also held that a UCC could not be forced on citizens, but that it is the duty of the State to work towards its establishment by making efforts to urge citizens to adopt it.

7.0 Uniform Civil Code in Goa:

Uniform Civil Code in Goa follows the principle of uniformity of personal laws among all citizens, irrespective of their religious belief. Uniform Civil Code does not necessarily mean the application of one uniform law for the whole country. Instead, the Code seeks to ensure uniformity by providing the same rights and obligations to individuals irrespective of their religion, in particular matters of family law. In the particular case of Goa, the Civil Code is largely based on the Portuguese Civil Code which was adopted by the state after its liberation from colonial rule in 1961. The Civil Code has been amended several times since then, to accommodate laws specific to citizens of the Indian subcontinent. The most prominent aspect of the Civil Code is its recognition of shared marital property and its equal treatment of men

⁶ AIR 2003 SC 2902

and women in matters of marriage, divorce and property. This has been especially useful for women, who have benefitted significantly in terms of economic security. Overall, Uniform Civil Code has been an important factor in promoting peace and stability in Goa. Additionally, Muslim individuals who have registered their marriage in Goa are prohibited from practicing polygamy.

8.0 Need of UCC

The biggest proponent of the UCC is the Constitution of India itself, and the many people who advocate for equal rights and social justice. The need for having a UCC is significant and here are a few reasons why:

- It will help in reducing gender-based social inequalities, as the current personal laws have had centuries to define and form the Indian population's mindset, shaping it in favour of the dominance of gender.
- It can create a single legal system that all its citizens irrespective of their religious orientation can adhere to, helping all of them to co-exist peacefully and inter-faith more often.
- It will end the unfair privileges and power handed to the patriarchal society and dominant religions that are virtually a hangover of the colonial era.
- It will help to reduce the burden on the Indian courts by reducing the number of legal cases that come under the purview of personal laws.
- UCC ensures gender justice and women's right and is helpful in eradication the Malpractices like female foeticide, 're-marriage' of the divorced women, end of dowry, polygamy and child marriage.

In a landmark Hon'ble Supreme Court of India decision in the **Sarla Mudgal Case**⁷ (1995) that upheld the Constitutionality of the Hindu Marriage Act, 1956. The issue before the Court was whether a Hindu husband who had legally converted to Islam still had to get a divorce under the Hindu Marriage Act if he wished to marry another woman.

The Court held that the husband would still be bound by the Hindu Marriage Act and since he had not obtained a divorce through the Act, he could not contract another marriage under the Act. The Court also held that conversion to Islam would not affect the husband's

⁷ 1995 AIR 1531; 1995 SCC (3) 635

status under Hindu law and that this applied regardless of what religion he had traditionally followed. The Court said, “A marriage solemnised under the Act shall be deemed to be a Hindu marriage and the marital relationship that subsists between the two parties to it shall continue to be governed by the Act”.

9.0 Criticism

UCC, which is expected to be a one-size-fits-all civil code, is widely criticized for disregarding the nation's diversity in religion, and culture and for disregarding the social codes of different communities. It is argued that a UCC which does not incorporate the diversity in culture, religious practices, beliefs and values of the citizens of India, cannot be deemed to be a truly uniform civil code.

Critics also cite several difficulties associated with implementing a uniform code. One of the main problems being that of enforcement of a uniform code in the face of existing personal laws. Critics also feel that the uniform code would not take into account the diverse customs and traditions of different communities, and that it would do away with the flexibility of the existing personal laws.

The UCC has also been contested on the grounds of gender equality and patriarchal bias. It is feared that the proposed UCC would ignore certain gender specific rights and may even lead to unfair discrimination against women.

The UCC has also been accused of infringing into the rights of religious minorities in matters concerning marriage, divorce, adoption and inheritance. Minorities fear that a uniform civil code will result in their rights being subsumed in a mandatory code that fails to take into account their unique concerns and needs.

Finally, critics feel that the introduction of a UCC would lead to a conflict between the personal laws governed by communities, and the new laws that are meant to override them. This not only has the potential to be highly disruptive, but it may also lead to serious legislative conflicts.

Conclusion

Uniform Civil Code or UCC is a concept of bringing a uniform legislative pattern in India that would ensure a uniform legal rights system for its citizens, irrespective of their religion, ethnicity, or gender. Though the UCC is as per the Directive Principles of State's Policy enshrined in the Constitution in 1950, with the numerous conservative and traditional beliefs gripping the nation's population, it is yet to be endorsed and implemented effectively.

UCC guarantees equal rights and justice to all its citizens, irrespective of their social or religious backgrounds. It will help reduce the discrimination against women and demolish gender-based disparities. The need for UCC is significant, not only to create a just system of laws in India, but also to bring about harmony and peace among its citizens and bridge the gap between them caused by the patriarchal systems.

However, due to the sensitive nature of the matter, such a code should be implemented thoughtfully and with due consideration by the government after taking into consideration all the pros and cons of the situation. With the changing mindset of the Indian population and the increasing awareness, a Uniform Civil Code may just be the right step towards equality, fraternity and social justice.

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