

CRITICAL ANALYSIS OF UNIFORM CIVIL CODE (UCC) IN INDIA

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ABSTRACT

A single set of laws for all people would replace the particular laws of individual religious organizations, according to the UCC plan. UCC stands for Uniform Civil Code, and it is referenced in Article 44 of the Indian Constitution as part of the Directive Principles of State Policy. The discussion of UCC began with drafting of the Indian Constitution and is continuously maintained by the political or judicial classes.

Although not legally binding, these principles are supposed to direct the state's policy-making. UCC is a matter of moment since the NDA administration wants to apply it across India and because it was included in the party's 2019 election platform. Currently, Goa is the only state in India to have adopted the UCC, also known as the Goa Civil Code; while the rest of the country adheres to other personal laws in accordance with its varied religious traditions.

KEYWORDS: *Uniform Civil Code, India, DPSP*

Article History

Received: 10 Jan 2020 | Revised: 18 Jan 2020 | Accepted: 31 Jan 2020

INTRODUCTION

In order to understand the impact of UCC, it becomes important to understand what it stands for and its repercussions on the citizens' personal matters. This implementation is aimed at creating a uniform and standard law for personal matters irrespective of the citizen's gender, religion, or sexual orientation. This would change the status of personal laws dictated by the religious texts of different communities. KirodiLal Meena proposed this bill in the Rajya Sabha for nationwide implementation.

Historical Perspective

The British government's 1835 report on colonial India is seen to be the source of today's uniform civil code. The English leadership recognized the need to introduce some uniformity in Indian law with regard to crimes, evidence, and contracts since managing a nation with such a wide range of religious and cultural practices was challenging. But they didn't include personal laws in its purview.

The members of the various committees and subcommittees engaged in extensive discussions over the debates in the Constituent Assembly. Ambedkar, Munhi, and Minoos Masani expressed a desire for UCC in their draft of fundamental rights. The members of the Indian Constitutional Assembly separated fundamental rights into two categories: those that can be challenged in court, i.e., Justiciable rights, and those that cannot, i.e., Non-Justiciable rights; the reasoning behind this was the existence of personal laws based on scriptures and religions keeping the nation carved up in many aspects.

UCC was given the spot in Article 35 of the Directive Principles of State Policy on November 4, 1948. By Article 35, the State “shall endeavor to provide for the citizens a uniform civil code throughout the territory of India.”

The assembly's Muslim members raised two objections to this issue at a subsequent discussion. First, personal laws must not be included in the scope, and second, the communities involved must provide their approval.

K.M. Munshi stated the following arguments in favor of UCC: it is crucial for maintaining national unity and novel for the Muslim community and other religious communities.

Ambedkar emphasized that the UCC is not a novel idea; it has already been implemented. The only areas that require unification are marriage and inheritance. The Uniform Civil Code (UCC) has been a hot topic in Indian politics since the Shah Bano case 1985. It was again proposed in November 2019 and again in March 2020, but each time it was swiftly dropped without being brought up in parliament.

Arguments Arised

The primary argument against it is that it is a part of the concurrent list, i.e., a list under the ambit of both state and center. This shows that the constitution makers never wanted it to be a matter of sole union interest. India is a nation known for its diversity and inclusion of all people from diverse backgrounds. Implementing UCC comes at a risk of offending people, their religious sentiments, and their personal beliefs. It is, therefore of utmost importance to notice that laws are different not even from community to community or religion to religion; they also differ in all states. Customary rules already in place take precedence over federal laws in Nagaland’s tribal districts regarding private matters like marriage, property ownership, etc. If codified civil and criminal laws like the CrPC and IPC do not adhere to this principle. For instance, the governments of West Bengal and Tamil Nadu altered the federal Indian Evidence Act of 1872. Be aware that several states have various legal drinking ages regarding criminal law. Meanwhile, Articles 25-28 of the Indian Constitution provide Indian citizens with religious freedom and allow religious organizations to handle their business. While establishing a nation’s policies, Article 44 of the Constitution compels the Indian state to follow directive principles (DPSPs) and common law for all Indian residents. This also gives optimism for India’s LGBTQIA+ population because the Uniform Civil Code does not establish distinctions based on gender or sexual orientation. Until far, no relevant legislation in India has recognized same-sex weddings as lawful.

Global Perspective of UCC

Uniform Civil Code is followed in many countries; they are Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Sudan, Egypt, America, Ireland, etc. All these countries have uniform laws for all religions, and there are no separate laws for any particular religion or community. Canada is a popular destination for US borrowers for various reasons (NAFTA proximity), including their enactment of the Personal Property Protection Act (PPSA). The PPSA is founded on the ideas of the UCC and has been embraced in all provinces except Quebec. In India, Goa is the only state with a standard civil code. The Goa Family Law is a set of civil rules, initially the Portuguese Civil Code, that continued to be applied following its acquisition in 1961. The Romans are directly responsible for civil law philosophy. The Romans employed doctrines to create a code specific to the Roman people and dictated how legal matters were resolved. They called that the unification of existing civil law had begun more than a decade earlier - superseded over 300 hundred local civil law codes. It supplanted customary law and existing legal rules, encompassing a wide range of subjects, including property, commodities, usufructs, easements, succession, wills, gifts, contracts, and quasi- contracts. The French Code attempted to

balance privilege and equality, as well as conventions and legal duties. In the United States, where the issue of diversity is more in line with Indian conditions, numerous levels of legislation apply independently to the country, the state, and the county, as well as to agencies and towns. States are self-contained legal entities with their own Supreme Courts that adhere to their practices and legal traditions, despite the fact that there are common principles that control these civil laws in the states in a universal way across the country. The Federal Supreme Court only hears cases involving federal concerns or those affecting the entire country, such as security, taxation, general legal difficulties, etc. The Muslim community dominates the Middle East nation. In the majority of these countries, Shariah law applies equally to everyone. Now consider Europe and Latin America, where this topic has never arisen, and a standard set of codes has been in place for a long time for both criminal and civil systems for better administration and delivery of justice. It Jus Civile, a legal term that refers to all the rules and principles of law derived from Roman laws and customs, as opposed to those derived from all nations' businesses, known as jus gentium, or from the fundamental ideas of right and wrong implicit in the human mind, known as jus naturale. In the modern world, one of the most well-known civil codes is that of France—the Napoleon Civil Code was implemented in France as early as 1804 - despite this fact.

CONSTITUTIONAL AND LEGAL VIEW

From a legal perspective, a Uniform Civil Code (UCC) involves harmonizing personal laws pertaining to matters such as marriage, divorce, inheritance, and adoption. It seeks to establish a standard set of civil rules that apply uniformly to all citizens, irrespective of their religious or cultural background. Let's delve into the legal perspectives and considerations surrounding the implementation of a Uniform Civil Code:

- **Constitutionality:** Implementing a Uniform Civil Code often raises questions about its constitutional validity. In countries with a written constitution, such as India, the constitutionality of a UCC is evaluated based on fundamental rights and the principles of equality, secularism, and non-discrimination. Courts play a crucial role in interpreting and determining the constitutionality of a UCC.
- **Personal Laws and Religious Freedom:** One of the key considerations in implementing a UCC is striking a balance between personal laws and religious freedom. Many countries have historically recognized personal laws based on religious or customary practices, granting communities the autonomy to govern personal matters. Implementing a UCC requires careful deliberation to ensure that individual rights are protected while respecting religious freedoms.
- **Gender Equality:** Gender equality is a fundamental aspect of a UCC. It aims to eliminate discriminatory practices and provide equal rights and opportunities for all individuals. The UCC strives to address disparities in personal laws, such as those related to marriage, divorce, and inheritance, that may disadvantage women. Ensuring gender justice and equality is a significant consideration while formulating a UCC.
- **Social and Cultural Context:** A UCC must consider a nation's social and cultural diversity. Different regions may have unique customs and practices that must be respected while formulating uniform laws. Balancing uniformity with diversity is a complex task that requires comprehensive consultations and deliberations with various stakeholders, including religious and community leaders.
- **Legislative Process:** Implementing a UCC typically involves legislative action. Drafting and enacting laws that establish a uniform framework across personal laws require careful deliberation, expert input, and parliamentary

debates. The legislative process should ensure transparency, inclusivity, and thorough analysis of the potential implications of a UCC.

- **Social Impact and Acceptance:** AUCC may have far-reaching social implications. It is crucial to consider the potential impact on society and address concerns arising during implementation. Gaining public acceptance, fostering dialogue, and raising awareness about the objectives and benefits of a UCC is vital for its triumphant performance.
- **International Human Rights Standards:** A UCC should align with international human rights standards. International conventions and treaties guide gender equality, non-discrimination, and personal freedoms. These standards ensure that a UCC upholds universally recognized human rights principles.

It is important to note that implementing a Uniform Civil Code requires comprehensive and inclusive discussions involving various stakeholders, including religious leaders, legal experts, policymakers, and civil society organizations. Balancing the principles of equality, religious freedom, and cultural diversity is a central challenge that must be addressed through open and respectful dialogue to create a comprehensive legal framework that respects individual rights and societal values.

DECIDED CASES:

Discrimination occurs on two levels due to different personal laws: firstly, between people of diverse religions & secondly, between genders. The Uniform Civil Code will give the right to equality and fairness in legal proceedings involving marriage, divorce, maintenance, child custody, inheritance rights, adoption, etc., to the vulnerable section of society, like women, regardless of their religious beliefs.

- In the case of **Mohammad Ahmed Khan v. Shah Bano Begum**, popularly known as the Shah Bano case, the Supreme Court, for the first time, ordered the Parliament to create a UCC in the year 1985. In this case, Shah Bano sought support from her husband under Section 125 of the Code of Criminal Procedure after receiving triple talaq from him.

The Muslim Women (Right to Protection on Divorce) Act, 1986, which limited a Muslim woman's right to maintenance under Section 125 of the Code of Criminal Procedure, overruled the Shah Bano case ruling.

- The case of **Sarla Mudgalv. Union of India** turned out to be a turning point for the UCC. The Supreme Court, in this case, directed the issue of bigamy in the context of a Hindu man converting to Islam to marry a second time. The court highlighted the need for a UCC to address conflicts arising from personal laws.

There were two other significant cases, i.e., Lily Thomasv. Union of India & ABCv. The State (NCT of Delhi). The Supreme Court highlighted, in the first case, the importance of UCC in terms of succession, & the latter, the Court held that a single mother of the Christian religion was eligible to apply for sole guardianship of her child without the approval of the natural father under the Guardian and Wards Act, 1890 that had not recognized the right of Christian single mothers. In this context, the court pointed out the disruption caused by the absence of a Uniform Civil Code.

- In the recent landmark judgment of the Supreme Court **Shayara Bano's Case**, the Triple Talaq concept is held unconstitutional, discriminatory, and derogatory. In March, when a PIL was filed in front of the Supreme Court to get the UCC passed, the court said that the court was the wrong forum to enact the UCC and closed the petition on UCC. The 21st law commission highlighted many practical difficulties, like Hindu law, where marriage is considered a holy sacrament; in the Christian direction, divorce is still stigmatized. In Muslim law, marriage is a contract; in Paris law, marriage registration is a very important ritual. It is very important to respect all these attitudes; one religion cannot be imposed on another. And if no concern comes in UCC, then the only way to move forward is to make changes in personal laws. So that the diversities are preserved and simultaneously, ensure that the personal laws do not contradict fundamental rights.

CONCLUSION

UCC symbolizes a progressive nation that has moved away from caste and religion issues. A Uniform Civil Code would assist society in moving forward and would help India achieve its objective of being a developed nation. The Commission proposed some measures in marriage and divorce that should be universally recognized in all faiths' laws. These changes include raising the marriageable age for boys and girls to 18 years old so they can marry as equals, making adultery a ground for both men and women, and streamlining the divorce process. It also advocated the repeal of the Hindu Undivided Family (HUF) as a tax-exempt organization. Thus, experts contend that if there is diversity in previously codified civil and criminal laws, how can the notion of 'one nation, one law' be applied to distinct personal laws of numerous communities? Furthermore, constitutional law experts suggest that the authors may not have intended absolute consistency, which is why personal laws were put in Concurrent List number 5, with the ability to act granted to Parliament and State Assemblies.

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