

UNIFORM CIVIL CODE CONUNDRUM IN INDIA

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Anagh Pandey, Law Student, Amity University

ABSTRACT

India is a country of diversities, which include diversity of languages, food, clothing style, festivals, religion, culture, etc. What makes it even more interesting is the diversity in customs and rituals from different religions from which the personal laws are derived.

We look to evaluate whether this kind of diversity and uniformity in personal law are possible, what will be the challenges and benefits of bringing about a uniform civil code, and what different courses of action can be taken by the current dispensation to implement the same.

Keywords: *Culture, Diversity, Languages, Religion, Rituals and Uniform Civil Code.*

1. INTRODUCTION

Since the advent of legal jurisprudence, topics like marriage, divorce, adoption, maintenance, etc. have been considered to be personal matters of any person, hence governed by personal laws. In India, every religion has its own set of personal laws to govern individuals. While Hindus are governed by statutory laws, the other religions, for example, Muslims, Christians, etc., follow religious scriptures, and the tribals follow their customs.

It is these laws and customs governed by religious texts that are often considered discriminatory for sections of society, leading to the demand for a uniform civil code. The term uniform civil code means the same personal laws for every citizen, irrespective of their religion. This paper traces the history of UCC, legal judgements related to it, benefits and challenges, and tries to provide for steps that can be taken regarding the implementation of the same.

2. HISTORY OF UNIFORM CIVIL CODE IN INDIA

The history of the UCC can be traced back to the arrival of the colonisers in India. With the beginning of the Portuguese rule over Goa, the Goa Civil Code of 1867 was implemented, which brought uniformity in matters of family and civil law. Attempts were also made by the government to implement a uniform legal system. Before the British rule, different religions in India were governed by their own religious books, which established codes for what to do and what not to do, as well as punishments. But this system was dismantled by the British through the codification of the Indian Penal Code, the Criminal Procedure Code, etc¹. The British further enacted laws like the Indian Succession Act of 1865, which applied uniform rules in certain civil cases.

3. DEBATES IN CONSTITUENT ASSEMBLY ON UCC

¹ Dr. Vijender Kumar and Naresh Kumar Vats, *Uniform Civil Code*, J. L. & PUB. POLICY (2017)

After the independence of India, a Constituent Assembly was set up to create a Constitution for Independent India, which will be the pillar for the future success and development of the country. One of the topics of debate was whether the Uniform Civil Code should be implemented in India or not.

According to Dr. BR Ambedkar, who was also the chairman of the drafting committee, a common civil law will be the cornerstone for establishing gender equality and social justice. His views on personal laws that were related to marriage and inheritance were that they were intrinsically discriminatory against women and lower castes.

Another senior member of the Assembly, KM Munshi, supported the UCC again by pointing out that personal laws were based on religion, hence creating inequality. He emphasised that the UCC will be effective in national integration².

According to Alladi Krishnaswamy Ayyar, personal laws should always be below constitutional principles; hence, he advocated for common laws for citizens regardless of their religion.

Several members of the Assembly were also not in favour of the implementation of UCC. According to Jaipal Singh, who was a tribal leader, UCC might pose a threat to the customs and traditions of the tribals. It might endanger the unique identity that these communities hold³.

Rajkumari Amrit Kaur took a centric view and asked to be cautious about the implementation of UCC without taking different stakeholders into consideration. She said that a steady approach should be followed to reform personal laws.

NG Ranga argued against the UCC by saying that it can disrupt the socio-cultural fabric of the country; further, he asked for autonomy for the communities to govern their own personal matters. Maulana Hasrat Mohani was also not in favour, as he believed it might disrupt the Islamic way of life.

² Riya Puniyani, *Uniform Civil Code and Conflicts of Personal Laws*, SSRN ELEC. J. (2020)

³ Shantanu Pachauri, *Uniform Civil Code in India: A socio-legal perspective*, 3(1)INT'L J. L. & LEGAL JURISPRUDENCE STUDIES (2016)

Hence, in order to balance both perspectives, it was decided in the Constituent Assembly that the Uniform Civil Code would be placed under Article 44 as a Directive Principle of State Policy, thus leaving its implementation to future governments according to the suitability of the time.

4. CASE LAWS RELATED TO UCC POST INDEPENDENCE

4.1 Shah Bano Case (1985)⁴: In this case, the problem of maintenance for Muslim women was raised after divorce. The Supreme Court, in its judgement, emphasised the need for a common law of maintenance for all women, irrespective of their religion. This case can be seen as an affirmative step towards highlighting the need for UCC in India.

4.2 Shayara Bano Case (2017)⁵: This case was related to Talaq-e-Bidat, or Triple Talaq, where the Supreme Court declared Triple Talaq unconstitutional. This case again highlighted the gender bias in personal laws, hence highlighting the need for UCC for gender equality in personal laws.

4.3 Hadiya Case (2018)⁶: The Supreme Court here upheld the right of an individual to choose their religion and life partner. This case can be seen from the broader prism of the UCC, as it also emphasises individual freedom, while on the other hand, personal laws governed by religious books put several restrictions on the freedom of individuals.

5. REPORTS OF LAW COMMISSIONS ON UCC

5.1 First Law Commission (1955): It advised the enactment of the UCC, marking the need for a common civil code for the citizens of the country irrespective of religion, hence replacing personal laws based on religious texts.

⁴ Mohd. Ahmed Khan vs Shah Bano Begum And Ors, 1985 SCR (3) 844

⁵ Shayara Bano vs. Union of India, (2017) 9 SCC 1

⁶ Shafin Jahan vs Asokan K.M., CRIMINAL APPEAL NO.366 OF 2018

5.2 42nd Law Commission (1971): Again, it emphasised the need for a uniform civil code in India, further talking about why it should be implemented and what cost it would incur.

5.3 83rd Law Commission (1977): It scanned through the implications of the implementation of UCC in India and its impact on various aspects of family law, including marriage, divorce, and inheritance.

6. BENEFITS OF IMPLEMENTATION OF UCC

The next question that comes to mind is: What will be the benefits of the implementation of UCC? It can be answered in the following way: The Preamble of India declares it to be a secular country, according to which the state should support all religions equally. But according to proponents of secularism, India can be truly said to be secular only when the UCC is implemented. They argue that allowing some religions to be governed through religious scriptures is a breach of the ideals of secularism⁷.

UCC can have immense benefit for those in the field of administration, as currently they have to go through different laws of different religions, making the decision-making process hectic and burdensome⁸. This can also be applied to the judiciary, as instead of going through different laws on a case-by-case basis, it will only have to apply the principles of the same law in different cases.

From Shah Bano to Shayra Bano, the discriminatory nature of personal laws against women has come to the forefront. Thus, one of the strongest arguments in favour of the UCC is that it will lead to the abolishment of discriminatory personal laws and will give equal rights to women.

⁷ Vikas Deep Verma, *The Uniform Civil Code in India: A Quest for Equality and Social Justice*, 6(5) INT'L J. L. MGMT & HUMAN. (2021)

⁸ Subhranil Bhowmik, *An Analysis of Uniform Civil Code*, 3(1) INDIAN J. INTEGRATED RSCH. L. (2023)

Another point given in favour of the UCC is that it will play an integral role in the integration of different communities. As argued by proponents of the UCC, different personal laws have created fissures in Indian society, leading to communal disharmony. To ensure the reintegration of society, they demand a uniform civil code.

Further, another strong reason in favour of the Uniform Civil Code is that most of the personal laws were compiled by British lawmakers who had a very narrow understanding of the scriptures; hence, as a step towards decolonization, these laws that were compiled by the so-called colonial masters should be scrapped and replaced with laws that were indigenously made with keeping indignity in mind.

7. CHALLENGES IN IMPLEMENTATION OF UCC

It is not right to see the UCC only through the prism of religion, as there are many other aspects and issues that need to be addressed before implementation of the same.

Firstly, the tribals in Schedule Areas enjoy special rights, including the right to practice their own customs and rituals relating to private matters. The issue that arises here is how these tribals will be included in the framework of the Uniform Civil Code. Further, if any of their customs are in conflict with the provisions of the law, which one will have the prevailing authority? It is important for the state to navigate its path carefully, as any encroachment on the customs of tribals can be seen as a threat to identity, hence leading to conflicts and destabilisation.

Secondly, the Hindu Law is seen as the only remaining law that has a connection to Hindu schools of thought like Mitakshara and Dayabhaga and thinkers like Manu⁹. If the Hindu law is abolished, then the only reminiscent application of the scriptures will also be taken away; hence, it is to be seen whether it is taken positively by the Hindu society or taken as a threat to their only remaining connection to their roots.

⁹ Riya Puniyani, *supra* note 2

Thirdly, many of the religions in India have followed their own personal laws governed through religious scriptures for centuries, for example, Christians and Muslims¹⁰. Bringing UCC can hurt the religious sentiments of these religions, leading to protests and even violence.

Fourthly, India being a federal country, the states also have the power to make laws given under the state list. Thus, if UCC is implemented, it can lead to conflict between the centre and state regarding laws, for example, marriage, and further complicate the situation.

8. CONCLUSION

Hence, from the above understanding, it can be seen that, like two sides of a coin, the Uniform Civil Code also has its benefits and challenges. But what is necessary is to see what can be done by the state to have a better understanding of the implications of the same.

To do so, some steps can be taken by the government, like the establishment of a Parliamentary Committee to deeply research and study various issues that are related to the UCC, its feasibility, the structure of the law, its impact on various communities, etc.

Secondly, in the beginning, instead of making UCC compulsory, the state can make it optional for the citizens, just like in the case of the Special Marriage Act. This will help the state understand the degree of acceptance of the law by society while also ensuring that there are no conflicts of interest.

Thirdly, the government should reach out to leaders of different religions so as to make them understand the real objective behind the implementation of the law. These leaders can help in disseminating the positive side of the laws, thus gathering the approval of society at large and ensuring smooth implementation of the same.

¹⁰ Vikas Deep Verma, *supra* note

Fourth , what will be the perspective of the state regarding the transgenders , LGBTQ , Same Sex Couples etc these are the most marginalised and discriminated section of society hence the UCC should ensure adequate protection and rights to these people.

Hence, in the current scenario, more important than the implementation of UCC is to understand it, understand its implications on Indian society, and understand whether implementing it would be feasible or not. Even more important is addressing the fears of the citizens and their inclusion in the decision-making process.

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