

Uniform Civil Code: Prospects and Challenges

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ARTICLE DETAILS

Article History

Published Online: 30 March 2018

Keywords

Uniform Civil Code, Indian Constitution, Personal Laws, Constitution Guarantees, Judiciary, Goa Civil Code, supreme Court Cases

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ABSTRACT

Uniform civil code in India is the proposal to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. The main aim of the uniform civil code is to make unity among different people from different religion and to promote justice, equality, and national integrity This paper highlights about the concept of the Uniform Civil Code and its Prospects and Challenges against its implement.

INTRODUCTION

The culture of India refers collectively to the thousands of distinct and unique cultures of all religions and communities present in India.

India's languages, religions, dance, music, architecture, food, and customs differs from place to place within the country. While the diversity is appreciated, it often leads to problems of integration and governance over the citizens. There are specific codes governing these different communities and religions, supplemented by customs, traditions and usages. The Constitution of India envisaged a Uniform Civil Code under Article 44, which includes a large ambit of personal laws.¹ As far as uniform legislation is concerned, India has achieved the same in all spheres (civil, contractual, constitutional etc.) except family and matrimonial laws. So through Article 44, an attempt was made, investing the State with this onerous responsibility. The term came under heavy scrutiny during the Constitutional Assembly Debates, with each community vehemently expressing its dissent on the same. There was a failure to arrive at a common ground regarding the same hence the Article had been reduced to merely directive in nature, and not mandatory. However, that did not diminish the scope of discussion on the topic of a UCC. Mr. M C Chagla made a vehement plea for the UCC, and stated, 'Article 44 is a mandatory provision binding the government, and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole country, and every section and community must accept and apply its provisions and directives'.² The talks of the UCC have been going on long since the Constitutional Assembly Debates. The Judiciary has played a very active role in trying to enforce the same, through several judgements and opinions. While there has been criticism alleging it to be 'judicial overreach', there has also been welcome support for the change being created, labelling it 'judicial activism' instead. Very recently, the Supreme Court asked the central government whether it was willing to bring a Uniform Civil Code to ride over inconsistent personal laws in

different religions. There was "total confusion" over the incoherent stipulations about marriage, divorce, adoption, maintenance and inheritance, the court said, and asked the Solicitor General of India to come back in three weeks with instructions on the government's view. This was the third time this year that the apex court had spoken on the Uniform Civil Code: on the previous two occasions, it had suggested there should be uniformity in personal law; this time it wanted a categorical answer from the government. While the requirement of a uniform civil code has been debated, no one would dispute the proposition that a provision in personal law that offends fundamental rights must be struck down as unconstitutional. The inconsistency in personal laws has been challenged on the touchstone of Article 14, which ensures the right to equality³, where litigants have claimed that their right to equality is being endangered by the different standards set for different personal laws, which can put them at a disadvantage.

GOA CIVIL CODE

Goa, The Smallest Indian State Has a Common Code For all the citizens residing in the state irrespective of their religion commonly known as The Goa Civil Code. The Goa Civil Code collectively called 'Family Laws', was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws because all the communities in Goa wanted it⁴.

Some ways in which the Goa Civil Code is different from other Indian laws include:

- A married couple jointly holds ownership of all the assets owned (before the marriage) or acquired (after the marriage) by each spouse.

1 Indian Constitution (part-4) article 44

2 MC Chagla, Plea for UCC, Weekly Round Table, Mar 25, 1973, page7

3 Indian Constitution (part-3) article 14

4 Carmo D'Souza, "Family Laws of Goa – Research and Reforms"

- In case of a divorce, each spouse is entitled to a half share of the assets. However, the law also allows antenuptial (occurring before marriage) agreements, which may state a different division of assets in case of a divorce.
- These agreements also allow the spouses to hold the assets acquired before marriage separately. Such agreements cannot be changed or revoked. A married person cannot sell the property without the consent of his/her spouse.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children compulsorily. This inherited property must be shared equally among the children.
- Muslim men, who have their marriages registered in Goa, cannot practice polygamy. Also, there is no provision for a verbal divorce.

former Chief Justice of India, Y.V. Chandrachud had once expressed hope that it would one day "awaken the rest of bigoted India.

WHY DO WE NEED TO ADOPT UNIFORM CIVIL CODE?

The proponents of a uniform civil code have been campaigning for it even before the independence of India. India has always been a place of many colors and spices and before independence in 1947 it would have been hard to point out what constituted India. Fighting the British rule and winning our independence also helped in creating this nation we call India. It was known even at that time that to further unite India and make it a truly secular nation we would need a uniform civil code. But even after 71 years of independence we haven't been able to do this.

The reasons for why this has not been done are complex and a different topic on its own but it all boils down to political will. Politicians have always found it beneficial to play vote bank politics and try to appease different castes and groups instead of attempting to integrate our nation. Instead of focusing on the negative let's focus on the positive and talk about the reasons why we do need a uniform civil code.

- **Will make India Secular in true sense:-** What we have right now in India is selective secularism which means that in some areas we are secular and in others we aren't. A uniform civil code means that all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs. This sounds fair and secular to me. A uniform civil code doesn't mean it will limit the freedom of people to follow their religion, it just means that every person will be treated the same. That's real secularism.
- **Promotes gender equality and give women more rights:-** A uniform civil code will also help in improving the condition of women in India. Our society is extremely patriarchal and misogynistic and by allowing old religious rules to continue to

govern the family life we are condemning all Indian women to subjugation and mistreatment. A uniform civil code will help in changing these age old traditions that have no place in today's society where we do understand that women should be treated fairly and given equal rights.

- **It Will Help in Reducing Vote Bank Politics:-** A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. Not having a uniform civil code is detrimental to true democracy and that has to change.
- **Every Modern Nation Has it:-** A uniform civil code is the sign of modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been the highest in the world our social growth has not happened at all. In fact it might be right to say that socially and culturally we have degraded to a point where we are neither modern nor traditional. A uniform civil code will help the society move forward and take India towards its goal of becoming a developed nation.
- **Personal Laws Are a Loop Hole:-** The various personal laws are basically a loop hole to be exploited by those who have the power. Our panchayats continue to give judgments that are against our constitution and we don't do anything about it. Human rights are violated through honor killings and female foeticide through out our country. By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that
- **It Will Integrate India:-** A uniform civil code will help in integrating India more than it has ever been since independence. A lot of the animosity is caused by preferential treatment by the law of certain religious communities and this can be avoided by a uniform civil code. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct.

CHALLENGES AGAINST UNIFORM CIVIL CODE

In India, a country with diverse languages and traditions, expecting people of diverse culture and traditions to act on the same laws, based on a uniform system is somewhat preposterous.

Manny Communities and political parties are against UCC

Considering the background behind UCC and the issues it promises to resolve, those who have been opposing the idea are vocal about their opposition to the said amendment, saying that it is particularly unconstitutional and it takes away the cultural and religious rights of other minorities as well, which was promised to them by the founding fathers of the constitution.

- **Naga Community:-** The naga minority community is also reportedly upset by the implementation of UCC. The Nagaland Bar Association has markedly warned that the implementation of UCC would bring about clear trouble for the culture and dignity of the Naga people
- **Few Political Parties:-** Some other political parties are also against the move of the implementation of UCC. They also support the minority issues by saying that it is a clear violation of the minority rights. They also put forth some very important points towards the impossibility of the implementation of UCC. Their main issue lies in the fact that its implementation of a country of diverse cultural diversity would be virtually impossible.
- **Muslim Community:-** About the questionnaire taken out by the law commission, there has been clear and evident rejection by the muslim community as the All India Muslim Personal Law Board completely disregarded the Law Commission's questionnaire on the UCC and decided to boycott it.

Arguments against the implementation of UCC:- There are several arguments and standpoints against the implementation of a Uniform Civil Code.

- **A move against secularism:-** The argument is based on the fact that India takes pride in its integrity within diversity. For maintaining diversity, we need to respect every minority communities personal choices and laws. That is what has led this nation to live in peace for such a long duration of time. The question that we need to ask ourselves is that whether the violation of personal laws is acceptable or not. We should also be practical while going about this issue. The impracticality of this issue lies in the fact that there are 14.2% Muslims in India and any move towards implementing UCC has received heavy opposition and criticism from their side. So it is an injustice to them by imposing majority Hindu views on them. A secular India is what the founding fathers promised when they formulated the Constitution and that is what the minority is demanding for. The government must respect the emotions of the minority population and thus decide on whether to infringe upon the personal law or not.
- **Infringement of personal religious laws:-** The Muslim community vehemently opposes the move by the government and they all say that UCC would violate their personal laws gravely and would thus result in irreversible damage to their religion and the laws therein.

A strong argument which goes against the implementation of the Uniform Civil Code is, the very idea of assimilating all the personal laws into a uniform code will infringe the constituents of personal laws of most of the minority religion.

JUDICIALLY APPROACH

Even after more the five decades from the fanning of the Constitution, the ideal of UCC under Article 44 is yet to be achieved. However, efforts in this discretion continued as reflected in various pronouncements of the Supreme Court from time to time.

- ❖ **State of Bombay v. Narsu Appa Mali**⁵ This case was filed questioning the validity of the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 and the act was challenged contenting that, this act is in violation of part III (fundamental rights)- Article14,15 and 25 in specific. In this case it was contented that Hindu marriage is a sacramental union and marriage under Hindu religion is for the procreation of a male heir, which is basically a religious practice or belief, and restricting this practice by the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 is violating ones freedom to profess, practice and propagate religion as per Article25 (i). The court held that, if a religious practice is against the public morality or public policy, the religious practice should subordinate the welfare or good of the people. That is, it is the welfare of the people that should prevail. The same notion was also held in the case of American Reports, viz. Davis v. Beason[6]. And also, the restrictions imposed under (b) of clause (2) of Article25 empower the state to provide for welfare and reform. Hence this contention was rejected. Article14 guarantees equality before law and equal protection of law and Article15 (i) directs the state to not discriminate against a citizen on the grounds only of religion, race, sex or place of birth or any of them. It was argued before the court that by allowing Muslims to practice polygamy (a Muslim man can marry 4 times), the state is discriminating the Hindus on the basis of religion through Bombay Prevention of Hindu Bigamous Marriage Act, 1946. In Hindu law, to have a male heir is a part of the religion and hence marriages for that purpose should not be restricted. Also, it was contented that Article44 of the Directive Principles of the State Policy (DPSP's) requires the state to secure for the citizens a Uniform Civil Code (UCC) throughout the territory of India, and the state of Bombay has discriminated on the basis of religion. Even section 494 of IPC (Punishment for bigamy) is applicable to all except Muslims. The council also asked to add personal laws as laws under Article13 (3) and held that personal laws comes under 'laws in force' under Article372 (3). The state contented that under Muslim law and in Hindu law, women are only allowed to marry once and men are allowed to practice polygamy. Hence it is discriminating women on the basis of sex. The court held that, there can be reasonable discrimination and here the Hindu community is discriminated for a social reform and hence cannot claim violation of Article14 or Article15 (i) under part III and even though Article 44 calls for

⁵ State of Bombay v. Narsu Appa Mali Air 1952 BOM 84)

Uniform Civil Code Article 44 can never be asked to be implemented, because DPSP's (Directive Principles of the State Policy) cannot be enforced. Even though Article 14 and 15 (i) calls for equality, reasonable restrictions are allowed for the betterment of the society. Hindu law and Muslim law have different origins and hence it can't be forced to be brought under UCC (Uniform Civil Code). But as to serve the purpose of DPSP's, a reform is initially made in the Hindu law and it is expected to spread to other laws as well.

❖ **Mohammad Ahmed Khan v. Shah Bano Begum**⁶: popularly known as the Shah Bano's case, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Despite section 127 of Cr.P.C. 1973 (which provides that if a woman has received an amount under personal law, she would not be entitled to maintenance under section 125 of Cr.P.C. 1973 after divorce) Muslim women would be entitled to maintenance if amount received by her as "dower" under personal law is not sufficient for her sustenance. Though the decision was highly criticized by Muslim Fundamentalists, yet it was considered a liberal interpretation of law as required by gender justice. Later, on under pressure from Muslim fundamentalists, the Central Government passed the Muslim women's (Protection of Rights on Divorce) Act, 1986, which denied right of maintenance to Muslim women under section 125 of Cr. P.C. The activists rightly denounced that it "was doubtless a retrograde step. That also showed how women's rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women's rights."

❖ **Sarla Mudgal (Smt.), and others v. Union of India and others**⁷: Kuldeep Singh, J., while delivering the judgment directed the Government to implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Art. 44. Therefore, the Supreme Court requested the Government of India, through the Prime Minister of the Country to have a fresh look at Art. 44 of the Constitution of India and Endeavour to secure for its citizens a UCC throughout the territory of India." He also suggested the appointment of a committee to enact a Conversion of religion Act. R.M. Shahai, J., while agreeing with Kuldip Singh, J., too agreed that "Ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentiality civil and material freedoms, are not autonomy but oppression."

❖ **John Vallamattom v. Union of India**⁸: the Supreme Court in a PIL by a Christian Priest, John and other citizens of Christian community, challenging the validity of the section 118 of the Indian Succession Act, 1925, while striking down the said section as being violative of article 14 of the Constitution, and also concerned over the contradictions in marriage laws of various religions, in a historic judgments, emphasized the need for a Legislation by Parliament on common civil code. Stressing that there was no "necessary connection" between religious and personal laws in a civilized society, a three judge bench held that it was matter of regret that Article 44 of the Constitution, which provided for the state to 'Endeavour' to secure a UCC for its citizens throughout India, had not been affected. The Court further observed that "Parliament is still to step in for framing a UCC in the Country. A UCC will help the cause of the National integration by removing the contradiction based on ideologies." It can be said that after mentioning the apex court view regarding the implementation of UCC that Art. 44 needs to be interpreted to sustain the plurastic character of the Indian community. It should be on the gender justice rather than on uniformity. Although the Supreme Court has not yet interpreted Art. 44. On all his decisions the Court enjoined upon the Parliament to enact a UCC without specifying what a UCC would mean. However, the word "uniform" should not mean the same law for all but it should mean similar laws for all and similarly should be regarding equality and gender justice.

❖ **Danial Latifi and another v. Union of India**⁹: the Court upheld the validity of Sections 3 and 4 of the Muslim Women (Protection of rights on Divorce) Act, 1986, as not being violative of articles 14, 15 and 21 of the Constitution of India. Under section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986, a Muslim husband is liable to make reasonable and fair provision for future of divorced wife which includes maintenance also, so she is not entitled to claim maintenance under section 125 of Cr.P.C. Under section 4 of the Act, divorced Muslim woman unable to maintain herself after iddat period can proceed against her relatives or wakf Board for maintenance.

❖ **Shayra Bano v. Union of India**¹⁰: In a yet very recent judgment the Apex court while joining six petitions on the subject matter invalidated the practice of Talak-ul-Biddat. It has been a victory for Muslim women with respect to their basic human rights and right to equality guaranteed under the Indian Constitution. The judgment though cannot be held in favour of UCC in stricto sensio. The grounds of invalidating the said form of talak have primarily been the non mandatory and unapproved practice under the respective Holy

8 John Vallamattom v. Union of India (2003) 6 SCC 611

9 Danial Latifi and another v. Union of India Writ Petition (civil) 868 of 1986

10 Shayra Bano v. Union of India Writ Petition (C) No. 118 of 2016

6 Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

7 Sarla Mudgal (Smt.), and others v. Union of India and others AIR 1995 SC 1531

text of Muslim. The bench did not go into the question of violation of Fundamental Right alone, mentioned in the Constitution. The answer to the question, whether a personal law can violate the Fundamental Right of any citizen seems to be in negative. In presence of such judicial precedent, every provision of the personal law needs to be studied on particular and specific level, that too, with respect to respective religious text and not Constitution.

- ❖ **Rajendra Babu, J.**¹¹ on behalf of a five judges bench consisting of Patnaik, Mohapatra, Doraiswamy, Patil, JJ. And himself observed that:- “In interpreting the provisions where matrimonial relationship is involved we have to consider the social conditions prevalent in our society. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognized by persons belonging to all religions.”

CONCLUSION

Personal religious laws have been found to act as a big obstacle in the path of Modern Civilization. To eliminate gender injustice. For example, Polygamy is allowed under Muslim personal laws. The personal laws based on religious scripts and customs are discriminating women on various grounds. To eliminate inconsistencies in application of tax laws. For example, the instrument of Hindu Undivided Families (HUF), allows getting tax exemptions, while Muslims are exempt from paying stamp duty on gift deeds. To deal with problem of Honour Killings by the extra-constitutional bodies like Khap panchayats. To remove the Socio-legal inequalities in each religion. Hence, the uniform civil code is nothing about religion but of women safety. And so I conclude that yes there is the desirability of uniform civil code.

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