



Uniform Civil Code In India: Analyzing Challenges, Reasons And Prospects

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ABSTRACT

India's Constitution Article 44 which puts forward the Uniform Civil Code (UCC) has long been the centre of heated discussion and controversy, having a long past. It suggests that a standard set of civil rules that apply to all citizens, regardless of their religious connections, would take the role of personal laws that currently regulate issues like marriage, divorce, inheritance, and adoption. This research paper intends to delve into the UCC's historical context, assess its current state, look at the difficulties it faces, and consider the likelihood of its implementation. The study provides an in-depth examination of the UCC in the Indian context based on a thorough review of the literature, legislative papers, judicial precedents, and public opinion.

Keywords: Indian Constitution, Uniform Civil Code, Personal Laws, Hindu Law

1. Introduction

The Uniform Civil Code (hereinafter UCC) was originally mentioned in the Bharatiya Janata Party's (BJP) election manifesto in 1996, and it has since been promoted as a means of ensuring gender equality. Lastly, the moment caught fire again when Uttarakhand Government passed the proposal to implement UCC in the state's 1st cabinet meeting under then-newly elected Chief Minister Pushkar Singh Dhami. He said that the announcement was in line with the promise made by him before the polls, adding that "soon a committee of experts would be formed to prepare the UCC draft. And now in 2023, as the BJP government is in power at the center, on Tuesday, June 27th, Prime Minister Narendra Modi initiated a signal on UCC implementation and spoke in favor of UCC and criticized the opposition parties for supposedly stirring up opposition among minority communities. Thereupon, the Union Law Minister Arjun Ram Meghwal held a meeting with Union Home Minister Amit Shah after the PM's speech on June 27th. The law secretary was also present. "Whatever the PM said on UCC is as per the Constitution and is mentioned in Article 44," the minister spoke in an interview with Economic Times. The developments came when the representatives from the Law Commission and the Law Ministry were invited to a hearing by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on July 3, 2023, to discuss the Law Commission's notice asking for comments on the UCC from stakeholders. The government is now set to introduce UCC in the parliamentary Monsoon session to be held in August 2023. It is therefore become evident to understand what this UCC is and what's behind such great stress.

Article 44 of the Indian Constitution is a part of Directive Principles of State policy (DPSP) which form of instructions or guidelines to the governments at the center as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country. The heading of the article reads Uniform civil code for the citizens. The explanation imposes a duty on the state to implement a uniform civil code to secure citizens' interests throughout the territory of India. The article's words conclude with this sentence, leaving a lengthy and extremely detailed context. This sentence is also accompanied by a profound and important explanation. It suggests the adoption of a single set of civil rules that would apply to all individuals, regardless of their membership in a particular religion. These rules would control important facets of private

life, such as adoption, divorce, inheritance, and marriage, among others. The purpose of the UCC is to replace the current system of personal laws that differ based on religious communities to advance equality, social justice, and national integration. UCC seeks to implement the fundamental principles enriched in Article 14 fulfilling Equality before the Law and ending discrimination against any citizen of any form in Article 15. As it is felt that on one side, Indian citizens are united by the common constitution and are divided by the application of personal laws which creates a sense of unfair standards where one is governed by a different law and one by another.

1.1 Background and Significance

Currently, as of now, Article 44 isn't implemented yet, but as mentioned, the government will soon introduce it to parliament and it will get enacted by 2023. In India, the two major communities include Hindus and Muslims, and the country had a long past of clashes between these two communities since Independence. Personal Laws of both these religious communities exist because of the secular character of the Indian constitution. Article 25 grants freedom of religion to every citizen which offers them three things, the right freely to profess, practice, and propagate the religion they prefer just for themselves. Article 29 gives the right to citizens to preserve their distinct culture on one side. On the other side, there is article 14 and 15 which speaks of equality before the law, treating every citizen equally and ensuring no discrimination among citizens based on their religion, race, caste, sex, place of birth, or any of them. The issue catches greater significance when on one side, people are governed by their personal laws, the application of religious/customary rule would surely benefit one but not the other. The best example could be the benefit of maintenance under section 125 of CrPC, which Hindu women can take but Muslim women can't. As a result, this would undoubtedly be against Article 15's provision. But some opinions might say upon implementation of UCC, that it violates article 25. On a scale of importance, if sections 14, 15, and Article 25 are kept, surely violations to 25 would still be considered just as against violations of Articles 14 and 15.

1.2 Research objectives and Methodology

The research paper is written on a descriptive research methodology while using a Doctrinal approach. The data collected are from secondary sources such as commentaries, journals, government archives, reported case laws, and bare acts and include internet articles. This research paper aims to analyze Article 44 to reach a subtle conclusion and to ascertain whether UCC implementation is really a necessity or even desirable as a major finding.

2. Historical Context of the Uniform Civil Code

The concept of a uniform civil code has its origins in the colonial era, when the British drafted rules to control several facets of Hindu community life, including inheritance and marriage. Other religious communities were permitted to continue adhering to their personal laws because the British did not extend this codification to them. The amendments to the Hindu Widow Remarriage Act of 1856 were the first legislative step towards civil code universality that eliminated gender disparity. The Indian Succession Act of 1865 and the Indian Marriage Act of 1864, respectively, eliminated the disparities in Christian marriage and protected the economic interests of women. The Married Women's Property Act of 1923 and the Hindu Inheritance (Removal of Disabilities) Act of 1928, which allowed Hindu women to inherit their property as a matter of right, were both created in response to the demands of female activists for a uniform code during the 20th century. The implementation of a consistent set of rules for all individuals, irrespective of their religious beliefs, became a contentious issue when India attained independence in 1947. The "Hindu Code Bills," also known as the Hindu Personal Law Amendments, were amended in large part thanks to Ambedkar's recommendations as the country's minister of law at the time. The Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Adoption and Maintenance Act of 1956, and the Hindu Minority and Guardianship Act of 1956 are only a few of the laws that enforced consistency. Later, the Special Marriage Act of 1954 and the Dowry Prohibition Act of 1961 filled in some of the gaps left by their predecessors. The former established guidelines for interfaith and inter-caste marriages as well as guidelines for divorce and dissolution, while the latter made providing, accepting, and demanding dowry illegal. Meanwhile, Articles 25-28 of the Constitution guarantee the right to freedom of religion to not only individuals but also religious groups. It expects the State to apply directive principles and common law while formulating national policies.

Personal laws were first framed during the Raj, mainly for Hindus and Muslims. But fearing opposition from community leaders, the British refrained from further interfering in this sphere. Following Independence, bills were introduced that largely codified and reformed personal laws for Buddhists, Hindus, Jains, and Sikhs. They, however, exempted Muslims, Christians, and Parsis. Since the Indian Constitution's introduction, there has been a constant verbal battle for the adoption of a uniform civil code in India. The existence of multiple personal laws was one of the primary factors keeping India divided to which Amrit Kaur, M.R. Masani, and Hansa Mehta were in favour of making the Uniform Civil Code provision a Fundamental Right rather than a Directive Principle for State Policy. Dr. B.R. Ambedkar had mixed feelings on the matter and believed that UCC was merely a suggestion rather than an imposition. "I do not think that the time is ripe in India at the present moment for me to try to push it through," Pandit Jawahar Lal Nehru declared. The assembly also

vigorously debated whether UCC should fall under Part III or Part IV of the constitution before coming to a vote that made the decision one of the directive principles of state policies, which are neither justiciable nor enforceable in court. However, due to widespread resistance from the opposition, the proposal for a Uniform Civil Code could only be included in the Indian Constitution as a Directive Principle for State Policy.

As mentioned earlier, the application of personal laws creates a division of unity among Indian citizens, this fact many times has created conflicts between different members of religious communities. Many such conflicts were brought before courts in the form of cases and courts of nearly every level in the hierarchy of India came across cases involving religious conflict and questions of law emerging from prejudiced laws. The case of *Mohd. Ahmad Khan v. Shah Bano Begum & Ors*, popularly known as *Shah Bano Case* was for the first time when the Supreme Court of India directed the parliament to implement the provisions of the Uniform Civil Code. Wherein the case, the court granted maintenance under section 125 of CrPC to a Muslim woman, upon whom Muslim Law (personal law) prevailed. This landmark judgment, however, led to a huge outcry coming from the Muslim community in response to which the central government at that time enacted the *Muslims Women (Protection of Rights of Divorce) Act, 1986* which nullified this judgment. But this case has been recorded as the first national-level call for the demand for UCC implementation from the Supreme Court. Afterward, many cases like *Sarla Mudgal v. Union of India*, *Ahmedabad Women Action Group & Ors. v. Union of India*, *Shayara Bano case*, and the most popular *Sabirmala Case* made headlines in which Courts found UCC implementation to be an effective remedy and righteous step for the Indian diaspora.

3. Current Status of Personal Laws in India

India follows a system of personal laws that apply to different religious communities. These personal laws govern matters such as marriage, divorce, inheritance, and adoption within specific religious communities. The country, as mentioned earlier, has separate personal laws for different religious communities, including Hindu, Muslim, Christian, Parsi, and others. These personal laws are based on religious scriptures, customs, and traditions. Personal laws are applied by courts in matters about family and personal affairs for individuals belonging to these respective communities.

3.1 Hindu Law and its Codification

Hindu Law is exclusive to India, unlike Muslim Law which is followed globally. Hindu Law is based on ancient Hinduism. According to the needs and progress of Hindu society, new customs evolved and were recognized in *Smritis*, *Nibhandas*, and *Puranas* and were incorporated into the law. Thus, the law was amended by great sages like *Manu*, *Yajnavalkya*, and others, but these men attempted to support their amendments with the text of *Sruti* to derive sanction from divine authority. A four-person Hindu Law Committee, known as the *Rau Committee* after its head *B. N. Rau*, was established by the colonial administration in 1941. The purpose of the committee was to clear up any questions about how the *Deshmukh Act* should be interpreted, make sure that the introduction of new female heirs is not done at the expense of the decedent's daughter, and consider bills that would eliminate the limited estate for women and make polygamy a reason for maintaining separate housing and living quarters. The Committee noted that a Hindu Code was now necessary later in 1941. Only through fundamental reforms that acknowledged gender equality could social advancement and modernization be accomplished. The code was to be developed with the help of traditional, conservative, and reformist Hindus as well as a thorough synthesis of the most advantageous aspects of the present-day schools of Hindu law and the earliest writings. The 1941 Report came with two preliminary bills, presented to a specialized committee in both houses of the legislature. The project received significant attention, and based on the committee's findings, the Hindu Law Committee was reinstated in 1944. Led by *B. N. Rau*, the committee developed a proposed Code covering various aspects such as *Succession*, *Maintenance*, *Marriage and Divorce*, *Minority and Guardianship*, and *Adoption*. This proposed Code gained extensive circulation and sparked discussions, eventually becoming known as the "*Hindu Code Bill*." During the first general elections of India in 1951-52, *Jawaharlal Nehru*, the Prime Minister, prioritized the Hindu Code Bill as a key campaign initiative. He pledged that if the Indian National Congress emerged victorious, he would ensure its enactment through the parliamentary process. With sweeping victories for the Congress party and *Nehru's* reappointment as prime minister, he embarked on an extensive endeavor to formulate a Bill that could be successfully passed. *Nehru* opted to divide the Code Bill into four distinct bills: the *Hindu Marriage Act*, the *Hindu Succession Act*, the *Hindu Minority and Guardianship Act*, and the *Hindu Adoptions and Maintenance Act*. These individual bills encountered considerably less opposition compared to the unified Code Bill. Between 1952 and 1956, each of these bills was introduced in Parliament and effectively passed into law.

3.2 Muslim personal law and its Implications

The Muslim personal laws in India are primarily derived from Islamic sources, including the *Quran* and the *Hadiths* (sayings and actions of the Prophet Muhammad). Matters such as marriage, divorce, inheritance, and maintenance are regulated by these principles.

The application of Muslim personal laws is overseen by the *Muslim Personal Law (Shariat) Application Act of 1937*. This Act allows Muslims to be governed by their own personal laws in matters of marriage, divorce,

succession, and other personal affairs. The Act recognizes the authority of Islamic scholars and courts to interpret and apply these laws.

3.3 Result of Study of Personal Laws

When the aforementioned information is taken into account, it is clear that both Hindu and Muslim personal laws have protected people's rights concerning the same topics. Only in terms of subsequent interpretation do these two pieces of legislation differ. Supporting views of both Personal Laws turn to their religious scriptures for in-depth interpretation or to refer to issues that need clarification for constitutional reference to provide greater clarification.

4. Law Commission on UCC

The Government of India formed the Law Commission of India as an independent statutory agency, and it has been instrumental in addressing the Uniform Civil Code (UCC) issue. To advance justice and strengthen the nation's legal system, the Law Commission is tasked with researching and making recommendations for legal reforms. The Law Commission has researched and offered recommendations on different facets of the UCC over time, influencing the conversation surrounding its implementation.

One of the notable reports by the Law Commission regarding the UCC is the 210th Report on "Reform of Family Law." Released in 2008, this report examined the need for a common set of laws governing marriage and divorce for all citizens of India, regardless of their religious backgrounds. The Commission highlighted the gender inequalities and discriminatory practices present in personal laws and emphasized the importance of gender justice and equality in the family law framework. The report recommended a gradual and phased implementation of the UCC, with a focus on areas where discriminatory practices against women were most prevalent.

In 2018, the Law Commission released its 270th Report on "Uniform Civil Code: A Blueprint for Legal Reform." This report aimed to provide a comprehensive framework for the UCC by addressing concerns related to personal laws, religious freedoms, and constitutional provisions. It acknowledged the diverse religious and cultural fabric of India while emphasizing the need for harmonization and the elimination of gender-based discrimination. The report proposed specific provisions and principles that could form the basis for a uniform civil code, taking into account the best practices from personal laws and international legal systems.

The Law Commission's reports on the UCC should be understood as recommendations only and not as binding legal precedents. Politicians must have the political will to implement the UCC, and legislation must be passed with broad support from all interested parties. The Indian government and the Parliament have the last say on whether to put the UCC into effect, even though the Law Commission's findings provide insightful recommendations.

The Law Commission's engagement with the issue of the UCC reflects the significance of this topic in the legal and social landscape of India. Its reports contribute to the ongoing dialogue surrounding legal reforms, gender justice, and the harmonization of personal laws. These reports serve as reference points for policymakers, lawmakers, and scholars who are involved in the discussions and deliberations surrounding the implementation of a Uniform Civil Code in India.

5. Arguments for Implementing a Uniform Civil Code

While respecting religious diversity is crucial, there have been ongoing debates about the need for a Uniform Civil Code (UCC). The UCC aims to bring about a comprehensive legal framework that ensures gender equality, upholds individual rights and secularism, promotes social cohesion, and harmonizes the diverse legal systems prevalent in the country. The following arguments would deem fit in support of UCC implementation, highlighting the core level needs.

Gender Equality and Women's Rights:

One of the primary arguments in favor of implementing a UCC is to promote gender equality and women's rights. Personal laws of various religious communities in India often have discriminatory provisions that disadvantage women. By enacting a uniform code, gender-based inequalities can be addressed, ensuring equal rights and opportunities for women across religious boundaries. It would help eliminate practices like triple talaq, polygamy, and unequal inheritance laws, empowering women and promoting a more equitable society.

Individual Rights and Secularism:

Implementing a UCC would strengthen the principles of individual rights and secularism. India, as a secular nation, should treat all its citizens equally, irrespective of their religious affiliation. The UCC would provide a common legal framework that upholds fundamental rights guaranteed by the Constitution, such as the right to equality, freedom of religion, and non-discrimination. It would ensure that personal laws do not supersede the individual rights of citizens and prevent any undue advantage or disadvantage based on religious identity.

Social Cohesion and National Integration:

A uniform civil code can play a significant role in fostering social cohesion and national integration. India's diverse population is bound by a shared sense of nationality, and a UCC would reinforce the idea of a unified nation. It would promote a sense of common identity and understanding among citizens, transcending religious boundaries. A uniform code would contribute to social harmony, reducing divisions and promoting inclusivity, thereby strengthening the fabric of the nation.

Harmonization of Legal Systems:

India's current system, with separate personal laws for different religious communities, creates complexities and inconsistencies. Implementing a UCC would bring about harmonization and standardization of legal systems, simplifying legal procedures, and ensuring uniformity in matters of personal law. This would enhance access to justice, reduce legal ambiguity, and facilitate a more efficient legal system.

6. Challenges to Implementing a Uniform Civil Code

Implementing a UCC is not without its challenges, as it entails navigating constitutional limitations, religious and cultural sensitivities, political considerations, lack of consensus, and resistance from minority groups. Following challenges are viewed to create hurdles.

Constitutional Limitations:

One of the primary challenges in implementing a UCC lies in navigating constitutional limitations. In countries like India, where secularism is enshrined in the Constitution, any attempt to impose a uniform code on diverse religious communities can be seen as a violation of their fundamental rights to practice their religion and preserve their cultural identity. The Constitution itself recognizes the right to freedom of religion and grants religious communities the freedom to manage their affairs in matters of personal law.

Religious and Cultural Sensitivities:

Religious and cultural sensitivities play a significant role in the resistance to a UCC. Personal laws, which are based on religious scriptures and customs, hold deep meaning and significance for many communities. Implementing a uniform code that disregards these differences can be seen as an infringement upon their religious beliefs and cultural practices. It is essential to strike a balance between ensuring gender equality and respecting the religious and cultural diversity of the nation.

Political Considerations:

The implementation of a UCC involves intricate political considerations. Political parties may be hesitant to support a UCC due to the fear of losing the support of certain religious or cultural communities. In a diverse country like India, where religious and cultural identities often shape political affiliations, any attempt to impose a UCC can be met with resistance from influential groups. Political parties must carefully assess the potential consequences before taking a stance on this sensitive issue. A recent example of this could be an act of Congress and CPI (M) who continue to spar over the Uniform Civil Code.

Lack of Consensus:

Achieving a consensus on a UCC is a formidable challenge. Different religious communities and their respective leaders may have divergent opinions on the matter. Building a consensus among them is crucial to avoid a perception of favoring one community over others. A comprehensive and inclusive dialogue involving representatives from various communities, legal experts, and civil society organizations is necessary to address the concerns and arrive at a mutually agreeable solution.

Resistance from Minority Groups:

Implementing a UCC can face significant resistance from minority groups who perceive it as an attempt to impose a majority culture on them. Minority communities may fear losing their distinct identity and being assimilated into the dominant culture. It is essential to address their concerns, protect their rights, and ensure that the UCC is not discriminatory in any manner. Building trust and engaging in meaningful dialogue can help in allaying their fears and gaining their support.

7. Prospects for Implementing the Uniform Civil Code

The prospects for implementing a Uniform Civil Code (UCC) in India depend on various factors and can be analyzed from different perspectives. The role of the Judiciary and the Parliament form the key prospects.

7.1 Judicial Interventions and legal precedents

The Indian judiciary has played a crucial role in shaping the discourse and providing guidance on the issue of the Uniform Civil Code (UCC). Through various landmark judgments and interpretations of constitutional

provisions, the judiciary has addressed key aspects related to personal laws and the potential implementation of a uniform civil code in India.

1. The Shah Bano Case (1985):

The landmark case of *Mohammad Ahmed Khan v. Shah Bano Begum* brought the issue of Muslim women's rights and the need for uniformity in personal laws to the forefront. The Supreme Court of India ruled that Muslim women, like women from other communities, have the right to maintenance beyond the period of iddat (a waiting period after divorce) under the secular law of the land. This judgment sparked a significant debate and led to discussions on the need for a uniform civil code to ensure gender justice and equality. To calm the public outcry government overruled this judgment by implementing The Muslim Women (Protection of Rights on Divorce) Act of 1986.

2. Sarla Mudgal Case (1995):

In the *Sarla Mudgal v. Union of India* case, the Supreme Court addressed the issue of bigamy and conversion to Islam to contract a second marriage while maintaining the first marriage under Hindu personal law. The Court highlighted the need for a uniform civil code and emphasized that personal laws should be subject to constitutional scrutiny and must conform to the principles of gender equality and non-discrimination.

3. John Vallamattom Case (2003):

In the *John Vallamattom v. Union of India* case, the Supreme Court emphasized the importance of gender equality and held that Christian women are entitled to maintenance under the Code of Criminal Procedure, irrespective of the provisions of their laws. The Court stated that personal laws cannot be a valid ground to deny the fundamental rights guaranteed by the Constitution.

4. Ahmedabad Women's Action Group v. Union of India

In the case of *Ahmedabad Women's Action Group v. Union of India*, the Supreme Court observed that it is a historic fact that both Muslims and Hindus in this country have their respective religious texts and which embody their distinctive evolution, and which are coloured by their distinctive backgrounds. Article 44 recognizes separate and distinctive personal laws because it lays down a directive to be achieved that within a measurable time, India should enjoy the privilege of a common uniform Civil Code applicable to all its citizens irrespective of race or religion.

5. Triple Talaq Cases (2017 and 2019):

In a series of cases, including *Shayara Bano v. Union of India* and *Muslim Women's Quest for Equality v. Jamiat Ulma-i-Hind*, the Supreme Court examined the constitutional validity of the practice of triple talaq (instant divorce) among Muslim men. The Court declared the practice of instant triple talaq as unconstitutional, arbitrary, and violative of women's rights. While these cases did not directly address the UCC, they highlighted the need for reform and the importance of gender justice in personal laws.

The Indian judiciary, therefore, has consistently emphasized the principles of gender equality, justice, and non-discrimination while addressing matters related to personal laws. Although the judiciary does not have the power to directly implement a Uniform Civil Code, its interpretations and judgments have influenced the public discourse and provided guidance to lawmakers and policymakers in their efforts toward legal reforms. The judiciary's role in upholding fundamental rights, promoting gender justice, and addressing the concerns of religious minorities has been instrumental in shaping the ongoing discussions and debates surrounding the UCC in India.

7.2 Legislative Initiatives and potential reforms

Law Commission reports many times put forth the need for reforms in personal and religious laws. It was before parliament to study and amend the same or to opt for UCC as a choice-based solution. But since the production of reports in 2016, and again in 2018, the Parliament didn't clarify its final stand until the Union Law Minister Kiren Rijiju on February 1, 2023, informed in Rajya Sabha that the Centre has not taken any decision as of now on the implementation of a Uniform Civil Code in the country, and he awaited 22nd Law Commission report to be produced which would speak of UCC implementation whose term was extended to August 31, 2024. And latently, Law Commission via a public notice informed that since more than three years have lapsed from the date of issuance of the previous Consultation Paper titled, "Reforms of Family Law" on 31.08.2018, bearing in mind the relevance and importance of the subject and also the various Court orders on the subject, the Law, it is considered expedient to deliberate afresh over the subject. Accordingly, the 22nd Law Commission of India decided again to solicit the views and ideas of the public at large and recognized religious organizations about the Uniform Civil Code. But now as of July 2023, the Parliamentary Committee on Law held a meeting on UCC in Delhi on July 3. The Standing Committee is headed by MP from the Council of States, Sushil Modi called representatives of the Law Commission and Law Ministry for discussion on UCC.

8. Conclusion

Considering the analysis made from observing this In-depth analysis, UCC is intern would be a highly appreciable change in Indian Democracy. If a Uniform Civil Code is devised, some factors need to be taken into consideration without fail. Government should implement UCC in a manner that does not entirely curtail the existence and practice of religious freedom. As per the findings it can be seen that UCC implementation does somewhere hamper citizens' rights under Article 25 and some opinions are true in the sense that it may be against the Secular character of India. The policy implementation is suggested to be made in a way that it should not overlap the existing provided rights, but also create a change so needed. Like, where Sushil Modi explained that the tribal community from the northeast region and other regions of India should be kept out of UCC. Now, that India awaits UCC implementation by 2023, the effects of its enactment will surely be a matter of future research prospects.

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