

UCC: IS INDIA READY FOR IT?

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Abstract

The Uniform Civil Code (UCC) has long been a subject of intense debate and discussion in India, proposing a unified set of laws governing personal matters for all its citizens, irrespective of their religious beliefs. This abstract delves into the question of whether Indian society is ready for the implementation of a UCC. It examines the potential implications of such a code on secularism, promotion of gender parity, national integration, and the assurance of equality to all the citizens. The urgency of this topic lies in India's diverse societal fabric, characterized by a multitude of personal laws based on religion. The existing diversity in legal provisions has often been criticized for perpetuating gender inequalities, hindering national integration, and denying equal rights to citizens. A UCC has been proposed as a means to address these issues, making it essential to evaluate India's readiness for such a transformative legal reform.

Promotion of gender parity is a critical concern, given the existing disparities within various personal laws. The UCC aims to provide a uniform framework that treats men and women equally in matters of marriage, divorce, inheritance, and more. This would not only empower women but also contribute to a more equitable society. National integration is another pressing issue as India grapples with religious and cultural diversity. Implementing a UCC would underscore the principle of 'one nation, one law,' potentially fostering a sense of unity and belonging among its citizens. On the other hand, it has the potential to ferver discontent among minorities, tribals which may feel that their religious rights are getting violated. Even though the concept of UCC seems great on paper. Consensus building through the method of deliberation and discussion is vital for implementing a law which has such a wide ramification. Forcing the law on people would lead to disobedience by the people.

Keywords – *Equality, Secularism, Indian, Civil Code, Religion*

Introduction

In the Indian legal landscape, the question of introducing a Uniform civil code has been doing rounds for quite some time. This research paper undertakes a comprehensive exploration into the necessity of a Uniform Civil Code for India, examining the socio-legal aspect that define the discourse surrounding this critical proposition.

The term "Uniform Civil Code" encapsulates the idea of a singular set of laws governing personal matters such as marriage, divorce, inheritance, and succession for all citizens, irrespective of their religious affiliations. As India grapples with the coexistence of diverse religious communities, each governed by its own set of personal laws, the debate surrounding the need for a UCC has intensified over the years.

The paper starts by presenting a historical backdrop of the demand for a Uniform Civil Code in India, tracing its roots to the framers of the Constitution and their vision for a secular and egalitarian society. It highlights the constitutional provisions that address the possibility of a UCC and the historical context that has shaped the narrative around this proposition.

Furthermore, the paper delves into the contemporary socio-legal landscape, examining the challenges posed by the coexistence of multiple personal laws. It explores instances of discrimination and inequality embedded in existing legal frameworks and investigates whether a UCC could serve as a remedy to these issues. It also analyses the response of the Indian judiciary on this contentious issue.

Additionally, the paper also discusses in great detail the 21st Law Commission Report on the UCC issue. In the subsequent sections, the paper meticulously examines the drawbacks associated with the implementation of the Uniform Civil Code (UCC). Furthermore, it delves into alternative approaches to the UCC, presenting a comprehensive analysis of potential alternatives and their implications.

Historical Backdrop

The demand for a Uniform Civil Code (UCC) in India is deeply embedded in the constitutional deliberations that unfolded during the post-independence period. In the wake of gaining independence in 1947, the framers of the Indian Constitution were

tasked with the monumental responsibility of shaping a legal framework that reflected the values of justice, equality, and secularism.

As the constitutional debates transpired, it became evident that India was a mosaic of diverse religious communities, each adhering to its distinct set of personal laws governing matters like marriage, divorce, inheritance, and succession. This diversity posed a unique challenge in fostering a unified national identity while respecting the pluralistic ethos of the nation.[\[1\]](#)

Discussions for the requirements of a Uniform Civil Code began in the sub-committee on Fundamental Rights. Advocates for the Uniform Civil Code contended that India's progress towards nationhood has been hindered by the presence of religious-based personal laws, which create distinct and isolated compartments within various aspects of life. Nevertheless, most members of the sub-committee objected to this demand, and it was suggested that the provision be included in the Directive Principles.[\[2\]](#)

Prominent members of Muslim community like Sahib bahadur and Naziruddin Ahmad opposed the UCC. They emphasised on the importance of obtaining consent of the communities whose religious laws would be affected by the new code. Ambedkar noted that that the nation effectively has a civil code that is uniform in substance and applicable nationwide. But the only areas where Civil Law has not yet made inroads are Marriage and Succession. Though, he was in favour of of implementation of UCC, he did not support the idea of "imposing it on all citizens" and instead envisioned Parliament initiating the process by specifying that the Code would be applicable only to those who make a declaration.[\[3\]](#)

The framers, recognizing the potential for discrimination inherent in various personal laws, conceived the idea of a Uniform Civil Code as a solution to address these disparities. The motivation behind this proposition was to establish a singular set of laws that would be applicable uniformly to all citizens, regardless of their religious affiliations. Such a code was seen as essential in fostering a sense of unity and ensuring that the principles of justice and equality were not compromised in the realm of personal laws.

The inclusion of Article 44 in the Directive Principles of State Policy added a constitutional dimension to the call for a UCC.^[4] This article articulates The State is tasked with making efforts to establish a Uniform Civil Code for all citizens across India's territory. Although not legally binding, these directive principles act as a guiding ethical framework for the state, influencing the development of policies and laws.

This further illuminates the challenges faced by the framers in reconciling the need for a uniform legal system with the religious and cultural diversity deeply ingrained in Indian society. Taking in account the mistrust between the religious communities, they deliberately put UCC as one of the directive principles which is unenforceable but still a guiding principle. They left the job to build consensus and implement UCC to the future parliamentarians of the country.^[5]

Socio-Legal Analysis

Problems In Personal Laws

Perpetuating Gender Inequalities:

Different personal laws may have discriminatory provisions against women, reinforcing traditional gender roles and inequalities. For example, despite getting amended, Hindu Succession act still takesin account women's marital status when it comes to succession. This is not the case with men.^[6] In Muslim personal law, there is no provision of equal inheritance of property by both son and daughter.^[7] In Parsi personal law, when a woman marries a non- parsi man then, she loses here religion. But this is not the case with parsi men.^[8]

The personal laws also show lack of concern for the well-being of women and children, leaving them with insufficient means for an independent life.^[9] This fact has even been recognised by the judiciary. With giving women weaker rights to inheritance and weak powers of marriage, divorce, adoption and guardianship, most personal laws leave them with fewer options and less power over their own lives. By giving women weaker inheritance rights and limited authority in matters of marriage, divorce, adoption, and guardianship, the majority of personal laws afford them fewer options and less control over their own lives.

Hindering National Integration:

Having separate personal laws in a diverse country like India can hinder national integration by fostering divisions based on religious or cultural lines. The existence of distinct legal frameworks for different religious communities implies that citizens are subject to different rules and regulations depending on their religious affiliations. This can lead to the reinforcement of religious identities over national identity.

Separate personal laws contribute to a fragmented sense of identity. When individuals are governed by laws that vary based on their religion, it reinforces religious identities over a common national identity. This can lead to the perception of different communities as separate entities rather than integral parts of a unified nation.

More over, National integration relies on social cohesion and a shared sense of belonging. Separate personal laws can create social divisions by emphasizing differences rather than promoting shared values. This may result in communities viewing themselves as distinct entities with limited common ground.

Denying Equal Rights to Citizens:

The existence of personal laws catering to specific religious or cultural communities can give rise to significant disparities in the treatment of citizens, fundamentally challenging the principle of equal rights. In countries with diverse religious demographics, such as India, distinct legal standards for various communities may inadvertently create a hierarchy of rights based on one's religious or cultural background.

Citizens belonging to different religious groups may find themselves subject to varying legal norms, affecting crucial aspects of their lives such as inheritance, divorce, marriage, and adoption. For example, unequal inheritance rights, often prevalent in personal laws, may lead to financial imbalances among heirs based on their gender or religious affiliation.[\[10\]](#)

Furthermore, the differential treatment in matters of divorce can result in gender-based inequalities, where individuals from one gender may find it easier to dissolve a marriage compared to the other. This not only perpetuates gender discrimination but also undermines the principle of equal protection under the law.[\[11\]](#)

The denial of certain rights or the imposition of different legal standards solely based on one's religious background contradicts the foundational notion of equal citizenship. It creates a fragmented legal landscape where individuals are not treated uniformly, fostering a sense of injustice and inequity.[\[12\]](#)

Complexity and Confusion:

The coexistence of diverse personal laws within a legal system introduces a layer of complexity and intricacy that can pose significant challenges for individuals seeking to understand and navigate their rights. This complexity arises from the existence of distinct legal provisions governing various aspects of personal life, such as marriage, divorce, inheritance, and adoption, based on religious or cultural affiliations.

The intricate nature of personal laws can result in difficulties for citizens in accessing justice. Navigating through a legal system already known for its complexities becomes even more challenging when individuals must contend with the specifics of personal laws. This complexity may deter people from pursuing legal remedies, as the prospect of understanding and navigating the intricacies of diverse legal provisions may seem daunting.

The challenges in accessing justice and enforcing rights can contribute to a situation where individuals are either unaware of their legal entitlements or reluctant to engage with the legal system due to its complexity. Consequently, this can lead to a lack of legal empowerment among citizens, with potential disparities in the protection and enforcement of their rights[\[13\]](#)

21st Law Commission Consultation Paper Report

In the paper, the 21st Law Commission, chaired by former judge of the Supreme Court, Balbir Singh Chauhan recommended several reforms in the personal laws. It released its questionnaire to the public in 2016 and garnered more than 75,378 responses proposing diverse approaches for implementing reforms in personal laws. Subsequently, the Commission published a 185-page consultation paper.[\[14\]](#)

It asserted that formulating a Uniform Civil Code is currently neither required nor advisable.^[15] The recommendations were extensive, with the Commission expressing the view that the mere existence of differences does not necessarily imply discrimination but rather indicates a robust democracy. The Commission observed a global trend where many nations are transitioning towards acknowledging diversity instead of enforcing legal provisions based on uniformity among culturally varied populations — as these provisions are deemed unjust to the weaker and vulnerable sections.^[16]

The recommendations of the 21st Law Commission underscored a nuanced approach, emphasizing that instead of enacting a Uniform Civil Code (UCC), the focus should be on comprehensive reforms in the family laws of every religion to ensure gender justice. The central idea was to promote uniformity in rights rather than imposing uniform laws, recognizing the diverse cultural and religious fabric of the nation.

The Commission's consultation paper strongly advocated for a celebration of diversity without disadvantaging specific groups. It highlighted the importance of guaranteeing women their freedom of faith while steadfastly upholding their right to equality. The recognition of this delicate balance formed the foundation for a series of recommended reforms, addressing both the personal family laws of various sects and religious and secular laws that placed women and children at a disadvantage.

The emphasis on gender justice resonated throughout the recommendations, aiming to bring about substantive changes in laws that impact the lives of women and children. The overarching goal was to create legal frameworks that are not only reflective of the diverse cultural and religious landscape but also protective of the rights and equality of all citizens, particularly the more vulnerable sections of society.^[17]

View of the Indian Judiciary

In the landmark case of *Mohd. Ahmed Khan vs Shah Bano Begum and Ors*, the Supreme Court noted that Article 44 of the constitution had not been implemented, also there was no substantial efforts to establish a unified civil code for the nation. The court

underscored the importance of a common civil code, emphasizing that its implementation would foster national integration by removing conflicting loyalties to laws with divergent ideologies.[\[18\]](#)

Another case in which SC opined in favour of UCC was *Sarla Mudgal vs Union of India*. The ruling declared that in the absence of a Uniform Civil Code (UCC), there exists a tempting incentive for a Hindu husband desiring a second marriage while the first still exists to convert to Islam. This case involved legal action against a Hindu individual entering into a second marriage through conversion to Islam while the initial marriage still existed. Justice R.M. Sahai, in his verdict, said: "A unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity...."[\[19\]](#)

In the case of *Ms. Jordan Diengdesh vs S.S Chopra*, a Khasi woman from Meghalaya, who married a Sikh under the Indian Christian Marriage Act, 1872, filed a petition seeking divorce or judicial separation under the Indian Divorce Act, 1869, citing her husband's impotence. However, the single bench of the High Court granted a decree of judicial separation based on cruelty. The Divorce Act, designed to govern divorce laws for Christians, permits only a decree of separation, not divorce. Observing the lack of uniformity in personal laws regarding the judicial nullity of marriage, the Supreme Court remarked that "the present case is another instance underscoring the urgent need for a Uniform Civil Code (UCC)."[\[20\]](#)

In the case of *John Vallamattom vs Union of India*, the petitioner argued that Christians, under the Indian Succession Act of 1925, faced restrictions in bequeathing property for religious and charitable purposes. The petitioner sought the declaration of unconstitutionality for Section 118 of the Act. When addressing concerns related to Christian personal laws, the court expressed regret that Article 44 of the Constitution had not been implemented.[\[21\]](#)

In several judgments, the judiciary has expressed concern about the gender-based discrimination prevalent in certain personal laws. The inadequacies in safeguarding the rights of women, especially in matters of marriage, divorce, and inheritance, have

prompted the judiciary to advocate for a more equitable and progressive law. Thus, a clear pattern has emerged within the Indian judiciary, showing a preference for the enactment of Uniform Civil Code (UCC) observed in Indian judiciary favouring the implementation of UCC

Is Ucc Really The Solution?

Forcing a UCC will infringe upon the constitutional freedom to practice the religion of choice, permitting religious communities to adhere to their specific personal laws. For instance, Article 25^[22] grants each religious group the right to manage its own affairs, while Article 29^[23] gives them the right to preserve their unique culture. Also, it would harm the secular ethos of our constitution. The Indian secularism, unlike west cannot contradict the plurality prevalent in the country. It recognises the diversity and grants freedom to practise one's belief. Enacting an UCC would fundamentally break that approach to secularism.^[24]

Moreover, the Constituent Assembly of India's fundamental rights sub-committee purposefully omitted the inclusion of a Uniform Civil Code (UCC) as a fundamental right.^[25] This apprehension aligns with the sentiments expressed by tribal communities such as the Rashtriya Adivasi Ekta Parishad, which petitioned the Supreme Court in 2016 to safeguard their customs and religious practices from the potential implications of a UCC. In the tribal regions of Nagaland, local laws take precedence over federal laws like CPC and CrPC.^[26] Also, Customary law prevail over matters concerning personal matters such as marriage and land ownership.^[27]

It can be argued that that if codified civil laws and criminal laws, such as the CrPC and IPC, do not adhere to the principle of 'one nation, one law', it becomes challenging to apply such a directive to the diverse personal laws of various communities. For instance, the Indian Evidence Act of 1872, a federal act, underwent amendments by the governments of West Bengal and Tamil Nadu.^[28] It is also noteworthy in the realm of criminal law that different states establish distinct legal ages for the consumption of alcoholic beverages.

Also, was it the intention of the constitution framers to establish complete uniformity? Notably, personal laws were positioned in the Concurrent List, specifically entry number 5, granting both the Parliament and State Assemblies the authority to legislate on personal matters^[29]. If the framers of the Constitution had aimed for uniformity in personal laws, they would have included them in the Union List, thereby empowering the Parliament exclusively for legislation in this domain.

The imposition of a uniform law across people of diverse cultures and religions poses a significant risk of stirring discontent and discord within society. India, known for its rich variety of cultures, languages, and religions, thrives on the coexistence of varied traditions and practices.^[30] Cultural and religious practices are deeply ingrained in the identity of individuals and communities. Attempting to enforce a singular legal code that disregards these distinct identities may generate a feeling of marginalization and alienation among certain groups, leading to heightened tensions. Discontent among diverse communities has the potential to escalate into social unrest, challenging the fabric of national unity and integrity. ^[31]

Thus, imposing uniform personal laws in a heterogeneous country like India, where people maintain deep religious affiliations, poses considerable challenges. Instead of pursuing the implementation of uniform laws that encompass individuals of all religions and cultures, an alternative approach could involve making personal laws more gender-just.

Conclusion

In conclusion, this research has meticulously examined the historical evolution of the Uniform Civil Code (UCC) and delved into the inherent problems within the realm of personal laws in India. The historical backdrop reveals a complex interplay of cultural, religious, and legal factors that have shaped the discourse around the implementation of a UCC. The 21st Law Commission's pivotal role, advocating for a shift towards gender-just reforms in personal laws instead of an outright UCC, marked a significant turning point in the ongoing dialogue.

While the Law Commission's perspective aligns with the imperative need for gender justice, the response from the Indian judiciary reflects a consistent inclination towards the implementation of a UCC. This judicial stance, however, must be critically examined in light of the diverse cultural and religious landscape of the country.

Proposing the implementation of a UCC as a panacea for the myriad issues in personal laws is a contentious argument. The constitutional provision placing personal laws in the Concurrent List suggests that the framers of the Constitution did not envision total uniformity. The argument against a UCC is grounded in the principles of religious freedom enshrined in the Constitution. Also, the idea to enforce a uniform law across a diverse population, each attached to its distinct cultural and religious identity, poses a tangible risk of discontent and discord. The intricate tapestry of India, woven with diverse religious threads, calls for a nuanced approach that respects these differences while addressing gender disparities.

In light of various challenges discussed, it is proposed that if the UCC is to be considered, a meticulous and inclusive consensus-building process should precede any legislative action. Dialogue and deliberation should be the cornerstone, involving representatives from diverse communities to ensure that their voices are heard, and their concerns are addressed. The current circumstances do not appear conducive for the adoption of such a radical change as the UCC.

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