



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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UNIFORMITY IN DIVERSITY: AN ANALYSIS OF IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA

Authored By: Mehuli Mishra

The recent row of implementation of Uniform Civil Code has gathered varied forms of protests and opinions from politicians and intellectuals alike. Various political parties and individual leaders raised their concerns towards such a decision, stressing on the point that something constructive and beneficial of this policy should come to the knowledge of the country before such a policy gets implemented. Many political parties slammed such an initiative as a means of gaining votes, while others hailed this as a means to achieve the long-desired aim of abolition of untouchability. The 90-year-old Nobel Laureate, Mr. Amartya Sen opined that this issue is not new, but difficult.

Although Article 44 was included as an alternative, to be implemented only when conditions and circumstances permit to do so, this has always stood as a challenge to the smooth functioning of the nation, in communal perspective. The newly constituted Government in 2019 stressed on the implementation of Uniform Civil Code as one of its agenda in their tenure, and look at the controversy arising out of it. With a bonafide intention of protecting the minorities, will the Uniform Civil Code at all succeed in bringing uniformity among all the sections of the society and take a step towards the holistic development of nation in the true sense of the word still remains a question for many. In this article, emphasis will be laid on what the Uniform Civil Code aims at, why it remains a controversy and the role to be played by it in the social and economic development of the nation at large.

INTRODUCTION

The cultural diversity of the nation stands as an x factor for the uniqueness of the nation. Each and every region of the country has a different story to tell. India has a different stand out when it comes to speaking about its holistic diversity. History bears testimony to the fact that India has been the melting pot of various religions, cultures and has served as the origin for many.

People following different religion have their own sets of customs and rituals when it comes to marriage and other important events defining a person's future in the long run. These customary practices eventually took form of personal laws that became binding on the particular followers. In such a backdrop, the Constitution was enacted, which contains basic set of rules. It began to serve and still serves as the grund norm for other laws applicable to the citizens. The basic human rights that should be given to each and every citizen were recognized in Part III of the Constitution, which could be enforced in a court of law. The principles which a state needs to keep in mind for making laws has been enshrined as Directive Principles of State Policy (Part IV of the Constitution). Although not enforceable, these principles have to be kept in mind by the State while formulating laws. One of these principles is providing security to the citizens of India in terms of a Uniform Civil Code throughout the territory of India.

Although this principle deserves a heart-warming welcome from the leaders and the mass alike, an initiation of it has always received widespread controversies and debates all around. Many political leaders link this with a shroud, under the garb of which the political leaders are on the verge of enriching their vote bank. This article will highlight the issues and the future ahead; how the Uniform Civil Code is going to leave an impact on the citizens of India in the long run.

UNIFORM CIVIL CODE ITS WHEREABOUTS AND CHALLENGES

The Uniform Civil Code is a proposal in India to have a check on the implementation of personal laws on citizens irrespective of their religion, gender, and sexual orientation. In a personal sense personal laws of various communities are governed by their religious scriptures. The recent furore regarding implementation of a uniform civil code across the nation (the petition being put forward by the ruling party as a part of their agenda in their tenure) is an important issue regarding secularism in Indian politics. It continues to remain disputed by Muslims, other conservative religious groups and sects in defence of and religious customs (for instance Sharia in case of Muslims). Personal laws, as distinguished from public law, cover marriage, divorce, inheritance, adoption and maintenance. On one hand, where Article 25 -28 of the Constitution guarantees religious freedom to Indian citizens and allows religious groups to maintain their own affairs, Article 44 of the constitution stands in sharp contrast to it, expecting the Indian state to apply directive principles of Uniform Civil Code and

common law for all Indian citizens throughout the territory of India while formulating national policies.

UCC came into limelight in the Indian political scenario after the historic **Shah Bano case in 1985**. The issue of making certain laws applicable to all citizens without abridging the fundamental right to practice religious functions was put forward in light of such issue. Focus was mainly on the Muslim Personal Law. The Muslim Personal Law is partially based on the Sharia law, which in turn permits divorce in an unilateral manner, polygamy and giving it a legal recognition on applying the Sharia law. UCC was once in November 2019 which was followed by another one in March 2020. However, both of these efforts were in vain, since they were withdrawn even before it was being introduced in Parliament.

Before we proceed further with the discussion, a brief insight into the legal aspect of the Uniform Civil Code (**Article 44 of the Constitution**) is required for better understanding.

UNIFORM CIVIL CODE IN THE CONSTITUTION:

ARTICLE 44

Article 44 of the Constitution of India reads as under:

“Uniform civil code for the citizens: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

This article aims to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution contended that a implementing an Uniform Civil Code is desirable and a credible approach; however it should remain voluntary for the moment, Perhaps this has been the reason of adding Article 35 of the draft Constitution as a part of the Directive Principles of the State Policy in part IV of the Constitution of India in the form of Article 44. The main intention behind this incorporation was that this would be implemented when the nation would be ready to accept it and the social acceptance to the UCC could be made. Dr. Ambedkar, in his speech in the Constituent Assembly said, "No one need be apprehensive that if the State has the power, the State will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so."

The history of the Uniform Civil Code dates back to **the colonial period** in India. The East India Company made an attempt to reform the social and religious customs prevalent in the society at that time. In an instance, Lord William Bentinck, the then Governor-General of India, tried to suppress sati, the prescribed death of a widow on her husband's funeral pyre. He went on to pass the Bengal Sati Regulation, 1829 which was later extended to other English territories across India.

The importance of uniformity in codification of law related to crimes, evidences and contract was felt in India as per the Lex Loci Report of October, 1840. However, the personal laws pertaining to Hindus, Muslims, and followers of other religions were set aside.

In the **post-colonial era** i.e.; after Independence, the Hindu Law Committee Report was discussed at full length. The first Prime Minister of the Indian republic, Jawaharlal Nehru, his supporters and women members felt the need of a Uniform Civil Code to be implemented for the benefit of its citizens. The Hindu Code Bill (which contained provisions for monogamy, divorce and right of daughters to inherit property). This Bill itself got a lot of criticism; among the critics were the first President of the country, Rajendra Prasad, Sardar Vallabhbhai Patel, and other noteworthy persons in Indian politics. The Bill was held to be "anti-Hindu" and "anti-Indian". It was at that time that they demanded a Uniform Civil Code. After a lot of twists and turns, this political turmoil finally met its end by approval of a lesser version of the Bill, and enactment of four separate acts in place of a single codified version of Hindu Laws; namely the **Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act.**

Unfortunately, this was not the end. Several Muslim members objected to this provision, apprehending that their personal law may be targeted next. Their objections were nullified saying that the uniformity has been already been achieved by the nation and that the legislature would never amend any personal law against the wishes of the citizens. (Mention should be made of the pre-existing statute of **Special Marriage Act of 1954**, which provided for civil marriages between individuals irrespective of religion, which was completely outside the realm of the religious wing of the personal laws followed.)

NEED FOR A UNIFORM CIVIL CODE IN INDIA

The Constituent Assembly Debates around the UCC and the erstwhile article 35 had a lot of dissent towards it. The issue of dominance by the majority communities was the main bone of contention. It is quite an established point of view that the need for Uniform Civil Code was felt right from the time when the Constitution began to be framed. The makers of the Constitution decided to keep it as a standby, which would be implemented once the political, and social scenario in India permits to do so. Thus Article 35 of the Draft Constitution took the form of Article 44 of the Constitution, which asked the State to shoulder the responsibility of implementing a Uniform Civil Code throughout the territory of India.

Dr B.R. Ambedkar, in one of its speeches in the Constituent Assembly, said that there is no urgency in implementing the Uniform Civil Code at that moment, but it should be implemented when circumstances permit to do so. According to him, the impossibility of a common civil code throughout a vast territory like India is a complete misnomer. Except that of the laws related to inheritance and succession, all other areas of civil laws were covered by codified laws (for e.g.: Negotiable Instruments Act, Sale of Goods Act, etc. to name a few) which are applicable all over the territory of India (uniform in nature).

Noted politician and writer **K.M. Munshi** took a very rigid view in negating the claims of the Code promoting dominance of the majority over the minorities. According to him, the Code recognizes the civil rights of the parties with respect to inheritance and succession. As a result, there is no connection between the Code and the religious sentiments of the majority and minority alike.

The Law Commission, in 2018, stated that implementing the Uniform Civil Code was not the need of the hour, and the society need not be mended by complete replacement of personal laws; a simple amendment will suffice. However, the 22nd Law Commission recently stated that the time for bringing uniformity in the civil society has come; and that efforts should be made to bring a consensus among the citizens themselves. As a step towards it, it would engage in consultations and discussions with the general public and the religious institutions as well.

In addition to the contentions given time and again by the politicians and eminent personalities alike, **the judiciary** has also played an important role in highlighting the need for a Uniform Civil Code

throughout the territory of India. Some of the notable cases are as follows:

1. Mohd. Ahmad Khan v. Shah Bano Begum (1985) 2 SCC 556¹

In this landmark case the facts were that Mohd. Ahmad Khan, the petitioner, divorced his wife Shah Bano Begum, by pronouncing talaq thrice (triple talaq). The main issue revolved around Section 125 of CrPC, and the question was raised as to whether the section overrides the personal law pertaining to divorce and maintenance; and that whether any conflict exists between the Muslim Law pertaining to recovery of maintenance of a divorced wife and between Section 125 CrPC. It was one of the landmark cases that raised a dire need of promoting uniformity in matters of divorce and maintenance; predominantly under the hold of personal law. The judgement initiated the proposal for implementation of a Uniform Civil Code, as it would end all the unnecessary conflict between the personal laws and the codified laws that are applicable all over India. The Parliament was asked to take effective steps for this purpose; as it would facilitate national harmony and equality before law in the long run. The Government refrained from addressing this issue. One of the aftereffects of this judgement was the enactment of the Muslim Women's Protection of Rights on Divorce Act in 1986.

2. Sarla Mudgal, (Smt.) President, Kalyani, and others versus Union of India and others (1995) 3 SCC 635²

This was the case where the Supreme Court made a sincere urge to the Government to implement a Uniform Civil Code all over the territory of India. According to Justice Kuldeep Singh, the Hindu Code Bill, despite facing a lot of criticisms and going through a lot of controversies; has been able to bring about nearly 80% of Indians into one single system so far as laws relating to marriage, divorce and maintenance is concerned. The time (taking into reference the fact that Pandit Jawaharlal Nehru at the time of implementing the Hindu Code Bill claimed that the time is not ripe enough to introduce and implement a unified system of law in the form of Uniform Civil Code at that time) has come to introduce Uniform Civil Code for all citizens all over the territory of India. As evident from the facts of the case, the problem of various Hindu converting to Islam only because of the fact that The Hindu Marriage Act, 1955 allows for marriage for once and the law related to Muslim marriages allows a man to have four wives (as mentioned in the facts of the case), can be resolved efficiently if all the

¹ Mohd. Ahmad Khan v. Shah Bano Begum (1985) 2 SCC 556

² Sarla Mudgal, (Smt.) President, Kalyani, and others versus Union of India and others (1995) 3 SCC 635

citizens (irrespective of religion, gender, caste) can be brought under one roof of a codified form of law. The Hon'ble judge also took into account the historical backdrop which led to the incorporation of the Uniform Civil Code and how the people (including the ones that came to India after partition) thought uniformity as a pre conceived notion for the lawmakers in India.

A similar view regarding the Uniform Civil Code was followed in the case of **Lily Thomas v Union of India (2000) 6 SCC 224**³. In this case, the Supreme Court laid emphasis on the need of a Uniform Civil Code in matters of succession.

3. **Shayara Bano v Union of India (2017) 9 SCC 1**⁴

Popularly known as the triple talaq case, the court was successful in doing away with the concept of talaq-e-biddat. The five judge-Constitutional bench opined that the practice of instant talaq is against the fundamental right to equality, and that it has nothing to do with the fundamental right to religion. Other Islamic countries in the world have abolished the practice of Talaq-e-biddat; neither has it been mentioned in any of the religious texts to give it a recognition from the legal point of view. The court also supported the view of a single codified system in matters related to marriage and divorce, by taking the example of how the codification of the Hindu Laws have helped to deal with the ambiguity of the laws applicable amongst Hindus themselves, in different regions of India. The need for implementing Uniform Civil Code in India gained ground for yet another time.

4. **Kesavananda Bharati v State of Kerala (1973) 4 SCC 225**⁵

Although this case is famous for the implementation of the basic structure doctrine, the court delved deep into the issue of whether any of the Fundamental Rights under Part III of the Constitution can be quashed on account of framing policies and laws under Article 44 of the Constitution. The Court held that it is not possible for the judiciary and the courts alone to bring the Government under compulsion for taking steps to realize this goal.

³ Lily Thomas v Union of India (2000) 6 SCC 224

⁴ Shayara Bano v Union of India (2017) 9 SCC 1

⁵ Kesavananda Bharati v State of Kerala (1973) 4 SCC 225

5. Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira & Others (2019) 20 SCC 85⁶

Taking into consideration the state of Goa which already follows a civil code of their own, the Supreme Court ruled that for Goans living outside Goa, they will be still governed by the Portuguese Civil Code and not by the Indian Succession Act. It also took the reference of the Goa Civil Code to emphasize the need of a Uniform Civil Code, which has become a sort of necessity to be implemented at the earliest.

VIEWS ON UNIFORM CIVIL CODE:

Arguments in favour of it:

National Integration and Secularism:

UCC would help in promoting national integration and hold the secular character of the nation by creating a common identity and sense of belonging among all citizens. It would also reduce the mutual and bigoted conflicts that arise due to the existence different personal laws. It would uphold the constitutional values of equality, fraternity and dignity for all.

It promotes Gender Justice and Equality:

UCC would ensure gender justice and equality by removing the discrimination and oppression faced by women under various personal laws. It would grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance, etc. It would also empower women to challenge the patriarchal and regressive practices that violate their fundamental rights. An example of Promotion of Gender Equality through codification of personal laws can be taken as the 2005 amendment to the Hindu Succession Act, 1956 which made the daughters equal inheritance rights with the sons, granting them coparcenary rights on an equal footing.

Simplification and Rationalisation of the Legal System:

In an attempt to promote equality and uniformity, the Uniform Civil Code will aid in making the legal system simple and comprehensive for the common people to understand. The various anomalies in civil and criminal laws prevalent in the personal laws can be done away with to a great extent, if all these laws are simplified and codified to a single system, in line with the basic human rights

⁶ Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira & Others (2019) 20 SCC 85

(fundamental Rights of the citizens as enshrined in the Constitution). This has been reassured time and again that these laws will not interfere with the religious practices of the people, so far as they do not infringe the basic human rights of the citizens.

People in support of UCC often take the reference of various judicial decisions and the existing principle of the Goa, which goes by the Portuguese Civil Code. If a single state can be successful in the successful implementation, the acceptance for the rest of the country will not be taxing enough.

Arguments against it:

Religious and Cultural Diversity:

India is a diverse country with a rich tapestry of religions, cultures, and traditions. A uniform civil code could be seen as a threat to this diversity, as it would require the abandonment of personal laws that are specific to particular religious or cultural communities. The homogeneity brought by the laws will spoil the diversity of the various religious practices and their significance will not be recognized; thereby posing a threat to the multicultural nature of the Indian soil.

Violation of the Right to Freedom of Religion:

The freedom to practise and preach one's religion is a fundamental right under the Indian Constitution (Article 25-28). According to some, a uniform civil code would violate this right, as individuals will be bound to follow laws perhaps not in accordance with their religious beliefs and practices.

Furthermore, it is also argued that a Uniform Civil Code is not feasible as the codified civil and criminal laws prevalent in the country vary from one state to another as well. Last, but not the least, some of them firmly believe that the Uniform Civil Code is just an excuse to bring the majority in a dominant footing; making the Uniform Civil Code inclined towards the majority (Hindus).

Challenges:

Although the need of the hour, an implementation of the Uniform Civil Code is likely to meet a lot of challenges in the near future. Some of them are given below:

In **constitutional perspective**, the right to equality as mentioned under Article 14 and the right to practise and profess one's religion are somehow at loggerheads. Care needs to be taken of the fact that both of them are enforceable and their infringement cannot be afforded at any cost. As a result,

framing laws in a harmonious manner is really difficult, more so when there are probable chances of the secular nature and the ethnic diversity of the nation to be compromised.

It has already been mentioned about the insecurity of the minorities so far as the implementation of the Uniform Civil Code is concerned. Thus, it is going to be a tedious task for the lawmakers and a challenge as well, to bring all the religious sects to a consensus for the greater good.

Besides, the chances for misinterpreting the bonafide intention behind implementing the Uniform Civil Code are many; with the fear of the policy getting a political colour as well. Hence care should be taken while materializing the thought of uniformity in its true sense, free from the shackles of misunderstandings, misinterpretations and political abuse.

CONCLUSION: THE WAY AHEAD

This entire discussion has always been destined to be kept aside by leaders of the nation for a considerable amount of time, not until the furore started afresh with the 22nd Law Commission Report bringing forth this issue yet again and initiating a fresh controversy all over the nation. The public notice dated 14th June, 2023 highlights the main areas of focus, where public opinions will be taken from the people as well as the religious institutions all over the world. It is to be kept in mind that the execution is not as easy as it has been to pen down in the notice, the law makers will have to get through a tough reality check. Hence care should be taken while taking steps towards reaching one of the much awaited milestones in Indian History-promoting uniformity among the citizens. Nationwide surveys should be conducted and the people should be made aware of the positive impact of uniformity once the Code is implemented. As the saying goes that “Rome was not built in a day”; so do I believe that all good things take time to be made. Going through a lot of debates, controversies, and unrests is what unfortunately awaits for the lawmakers, who made it an effort to carry out the long pending task. This also invites a conscious effort from our side as well. We should keep in mind that humanity is above all religion. Every citizen is entitled to his basic rights and they cannot be infringed by anyone.

In a nutshell, Implementation of a Uniform Civil Code can be a trend setter and an example for other nations to adopt, as it would exhibit a perfect balance of humanity and progressive society while

sticking to the roots and deeply adhering to the religious and cultural diversity, something which we take pride in as Indians. As an Indian, we can expect the Uniform Civil Code to be the epitome of fairness and equality while respecting the religious and cultural sentiments of each and every citizen. Only then can we take a step towards development in the long run.

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