

UNIFORM CIVIL CODE; THE FUTURE RELIGION OF INDIA – ASSESSING ITS IMPACTS AND CHALLENGES

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Abstract

“The State shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India”, as stated in Article 44 of the Indian Constitution. Article 44, a DPSP (directive principle of state policy) was introduced in our constitution with a purpose behind it. The aims along which UCC runs were not merely meant to eradicate personal laws but also to serve a larger purpose for a secular country with uniformly aligned laws and to cull out social evils like child marriage (that arise from religious aspects) from the nation. How will UCC protect against child marriage when there is already an act in place for it? Is UCC already implemented in some parts of India? What are the opinions of the critics? What shall be the pre estimated pros and cons of a countrywide UCC in India? What are the measures that must be taken to achieve an ideal UCC in India?

Keywords: Uniform Civil Code, purpose, secular, social evils, implementation, critics, ideal UCC etc.

Introduction

A national civil code that applies universally to all members of society, regardless of their faith, would imply that all groups would be treated equally under it. It addresses topics including property succession, inheritance, divorce, maintenance, and adoption. Its foundation is the idea that in contemporary society, there is no relationship between religion and the law.

Ministry of Law and Justice made a reference to the law commission of India dated 17th June, 2016 to ‘examine matters in relation to uniform civil code.’⁴⁵⁴ They proposed a consultation paper on reform of family law.⁴⁵⁵ Some arguments favouring the UCC are:

- **Constitutional:** Given under the directive principles of state policy, in the Indian constitution, it holds constitutional validity and

thus is not go against any law made under the constitution of India.

- **Gender Justice and empowerment of women though uniformity:** When there will be uniformity in laws for all religions it would by default lead to gender justice and women empowerment for all.

- **Streamlined Laws (simplification and consolidation into one single code):** UCC will also help in a streamlined and organized structure of laws without any confusions.

- **Save time of the Court:** The implementation of UCC shall also save the time of the court in related matters which may arise in future, or when there is the rise of a new community, general laws shall suffice.

- **Secularism:** (All citizens will be treated in the same manner, regardless of their religion). The introduction of UCC for the whole of Aryavrat shall help in achieving title of secularism in an undebatable manner. As, it would comprise of the same laws for all citizens regardless of their religion.

⁴⁵⁴ Need for a UCC, Byjus, <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>, Last Visited on 26th March 2024

⁴⁵⁵ Archives, Law Commission of India, <https://lawcommissionofindia.nic.in/archives/>, Last Visited on 26th March 2024.

- **Success Story Abroad:** USA United States of America has successfully implemented UCC in their country. When India can borrow laws from other countries, it is capable enough to draw inspiration from them to make some changes as well to add a UCC.⁴⁵⁶

UCC in Curbing the Issue of Child Marriage

Biggest benefit is uniformity in the law itself. As of now, India has the Child Marriage Prohibition Act, which prohibits all marriages below the age of 18 years for females and 21 years for males. Yet as per National Crime Records Bureau, 25% of India's marriages are child marriages (illegal marriages). Furthermore, many high courts have ruled that under various religious traditions if a child is married, they have allowed it. Karnataka HC in a recent case granted bail to a minor girl's husband who forcefully married her impregnated her, citing personal law. Whereas Child Marriage Prohibition Act is supposed to supersede all these laws. Thus, it creates a dilemma leading to confusion in laws. It is important to understand that a child who is at the risk of getting married is under the risk of getting raped, is also under the risk of maternal death as well. Thus, UCC can act as a very effective tool to curb social evils hiding behind the curtains of

Examining Uniformity of Uniform Civil Code in Uttarakhand; Testing the Waters and Scrutinizing Uniformity

Recently, with the house nod, UCC has been introduced in the state of Uttarakhand. The UCC has also faced criticism for its allegedly targeting approach towards Muslims and for excluding the Scheduled Tribes (STs) from its jurisdiction. The president of All India Majlis-E-Itehadul Muslimeen, Asaduddin Owaisi, feels that the UCC is really a "Hindu Code." "The UCC is not uniform," he stated in an interview with Frontline. First of all, the tribe members are excluded. Why should the STs be excluded if the UCC has such positive social effects? Second,

⁴⁵⁶ Need for a UCC, Drishti IAS, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/need-for-ucc-in-india>, Last Visited on 27th March 2024.

the Hindu Undivided Family [HUF], which provides tax benefits to the Hindu community, has not even been brought up by the UCC. The UCC cannot be consistent as long as it does not apply to the majority population, as Hindus and STs have been granted exemptions.⁴⁵⁷

Assessing Positive Impacts and Challenges

Pros:

- **The Registration of Marriages Debate:** The implementation of UCC nationwide shall provide a clear stance on the registration of marriages to be mandatory or optional and clarity shall also come in the penalty that is to be imposed if mandatory.
- **The Same sex Marriage Debate:** Both gender and biological attributes consist distinct components of sex. Biological characteristics could include genitals and chromosomes whereas gender could include one's self-image or emotional sense of sexual identity. Thus, the term gender comes under the ambit of term 'sex' as established in the National Legal Services Authority VS UOI and Ors.⁴⁵⁸ Therefore, not granting marriage rights and recognition to an LGBTQ couple shall violate their right under Art. 15 of the Indian constitution. The state is bound to not discriminate, on the grounds of gender.
- **Single System of Divorce:** Certain religions have been promoting some discriminatory structures of divorce. For instance, it is an established fact, that regardless of any religion a citizen shall be equally treated by the law. The Muslim women also fall under the ambit of citizens. Then why is it so, that the Muslim women are devoid of their basic rights? Judgements like Shayara Bano Vs UOI⁴⁵⁹ and Karim Abdul Rehman Sheikh Vs Shehnaz Karim Sheikh and Ors have successfully capture the essence of the above statements and granted reliefs to the Muslim

⁴⁵⁷ Nitya Thirumalai, UCC Bill Uttarakhand, News 18, <https://www.news18.com/india/uttarakhand-ucc-bill-why-leave-out-tribals-or-legalise-live-in-relationships-ask-critics-8766453.html>, Last Visited on 28th March 2024.

⁴⁵⁸ NALSA VS UOI, (2014) 5 SCC 438.

⁴⁵⁹ AIR 2017 SC 4609

women by applying the rule of harmonious construction of law. Coming up of an UCC shall grant all such rights to all women at once and they won't have to be a part of the long, time taking and exhausting process of court cases just to get rights that they are born with naturally.

Challenges:

- **Maintaining a balance:** Maintaining a balance between individual personal rights and uniform laws will pose a huge challenge. The implementation of UCC might harm religious sentiments of people in India, a secular country.
- **Chances of Violent Protests:** Violent protests in the name of religion are not new to Indian landscape. As per the National Crimes Record Bureau 857 communal violence instances were reported in 2020 and 378 instances in 2021. Public comments on religious minorities made by academics, activists, political officials, and religious leaders led to controversy. Examples included the BJP state politician Hari Bhushan Thakur Bachaul, who declared that Muslims should be "set ablaze"; P.C. George, a former legislator in Kerala State, who urged Hindus and Christians to refrain from dining at restaurants owned by Muslims; and former BJP Rajasthan state legislator Gyan Dev Ahuja, who urged Hindus to kill Muslims suspected of slaughtering cows. Yati Narasinghanand Saraswati, who was characterized as a Hindu religious extremist, who urged Hindus to "take up arms" against the threat of religious conversion and Muslim rule in the nation. At the end of the year, the four had been charged by the police for their remarks, and their cases were pending various stages of investigation and prosecution.⁴⁶⁰

Law Commission; Opinions Regarding the Uniform Civil Code

The Law Commission of India has looked into the Uniform Civil Code (UCC) and its effects on Indian society on a regular basis. The Law Commission made the following observations:

- Justice Balbir Singh Chauhan's 21st Law Commission of India
This commission stated that it might not be necessary or desirable to create a UCC at this time. Rather, it proposed a number of changes to different personal laws that apply to distinct communities. Rather than recommending a single, unified legislation, it instead suggested amending and changing current family laws to ensure justice and equality among all religions.
- India's 22nd Law Commission, presided over by Judge Rituraj Awasthi
This commission was looking for public input on the UCC and has released a consultation paper on the subject. A wide range of people, including lawmakers, religious institutions, legal professionals, and civil society organizations, had been contacted to share their opinions on the viability, ramifications, and possible structure of a UCC.⁴⁶¹

Tracing the Case Laws

Shah Bano Begum vs. Mohd. Ahmed Khan (1985)

In this instance, the Criminal Procedure Code's Section 125 granted Muslim women the right to maintenance after the iddat period. It was noted that the removal of contradictions based on specific theological philosophies would be facilitated by a UCC. Union of India v. Sarla Mudgal (1995)

In this instance, the Supreme Court decided that a Hindu husband who converts to Islam is not allowed to remarry without first divorcing his previous spouse. In order to guarantee gender justice and equality, the court underlined the necessity of a UCC.

Union of India v. Shayara Bano (2017)

The Supreme Court ruled that triple talaq was unlawful in this instance because it infringed upon the fundamental rights of Muslim women. The decision made clear how urgent it is to pass a UCC in order to combat gender inequality and guarantee consistent legislation regarding marriage and divorce.

⁴⁶⁰Government Reports, Govt of India, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/india/#:~:text=There%20were%20also%20cases%20of,compared%20to%20857%20in%202020,Last%20Visited%20on%2029%20March%202024.>

⁴⁶¹UCC, Next IAS, [https://www.nextias.com/blog/uniform-civil-code-ucc/#:~:text=A%20Uniform%20Civil%20Code%20\(UCC,matters%20with%20different%20religious%20communities.](https://www.nextias.com/blog/uniform-civil-code-ucc/#:~:text=A%20Uniform%20Civil%20Code%20(UCC,matters%20with%20different%20religious%20communities.) Last Visited on 29th March 2024.

Union of India v. Joseph Shine (2018)
Section 497 of the Indian Penal Code, which dealt with adultery, was overturned by the Supreme Court in this case because it was unconstitutional under Articles 14, 15, and 21 of the Constitution. In order to resolve contradictions in personal laws, the court recommended the adoption of a UCC and underlined the necessity of gender-neutral legislation.

State of Kerala v. Indian Young Lawyers Association (2018)

In this instance, the Supreme Court reviewed the prohibition against menstruating women entering the Kerala shrine of Sabarimala. The ruling made clear how important it is for a UCC to reconcile competing rights and provide female equality in all religions.⁴⁶²

Achieving an Ideal UCC for India; Suggestions and Recommendations

For India, to achieve a uniform law structure, and curb the social evils popping out from the basket of religion and in the name of religion, a nationwide UCC is the need of the hour.

- There are administrative and logistical issues that must be resolved in order to implement a UCC. To meet the new unified legal framework, it is necessary to modernize and simplify the current administrative processes, forms, and documents.
- Adequate training and capacity-building programmes for legal professionals, such as judges, solicitors, and legal support workers, are essential to the successful implementation of a UCC. Giving legal professionals thorough training on the UCC's rules and nuances will help them traverse the unified legal framework with effectiveness.
- Encouraging the general public to be aware of and comprehend the UCC is essential. It is recommended that public engagement programmes, awareness campaigns, and educational activities be implemented in order

to provide information on the goals, advantages, and consequences of the UCC.⁴⁶³

Conclusion

A brick-by-brick Approach that India is already seemingly following is a good way to go ahead with the idea of UCC implementation. Pilot initiatives can be started in certain areas or communities to show the viability, acceptability, and usefulness of a UCC.⁴⁶⁴In my opinion, a fair code is a priority over a uniform code always. So, none of the aspects should be left unanalyzed and raw.

⁴⁶² Supra Note 8.

⁴⁶³ Supra Note 1.

⁴⁶⁴ Supra Note 3.