



Uniform Civil Code in India

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Abstract

The Directive Principles of State Policy are contained in Part IV of the Indian Constitution. Even though these principles are not legally binding, they are essential to the country's administration. Article 44 of the Constitution establishes a responsibility on the state to develop a Uniform Civil Code as one such directive principle. Since its inception, the Supreme Court has issued several directives for its execution. "Due to the over-politicization, however, this remains a pipe dream. There is no universal legislation for personal affairs such as marriage, divorce, adoptions and so forth in the lack of a single law. In their religious teachings and conventions, they provide for gender discrimination practises that are sanctioned by these rules.

Keywords: religious practices, personal laws, Right to Freedom of Religion, Right to Equality, secular activities, Uniform Civil Code etc.

Introduction

Injustice anywhere is a threat to justice everywhere- Martin Luther King

It was on November 26, 1949 that we, the people of India, established a constitution that guarantees justice, liberty, equality, and fraternity for all citizens of India. Groundwork for enforcing people' fundamental rights is laid forth in India's Constitution under Part III. Part IV of the Directive Concepts of State Policy lays out principles that are not enforceable, but are still essential to the country's governance, and it is the state's obligation to put these principles into practise when establishing legislation.

It is analogous to the Uniform Criminal Code, which is applicable to all groups regardless of their religion, ethnicity, caste or creed. The Uniform Civil Code (UCC) is Various facets of personal relationships are addressed by the Civil Code, which includes the Indian Contract Act, the Transfer of Property Act, and the Code of Civil Procedure, which are all applicable across India's vast area. However, there is a different area of law that is not consistently implemented. In certain religious traditions, the laws governing a family are referred to as 'Personal Law.' These rules apply to a person's family no matter where they travel or what religion they practise.

It is stated in Article 44 of the Indian Constitution that it is the state's obligation to implement a Uniform Civil Code (UCC) that is applicable to all citizens of India regardless of religion, racial or ethnic background. However, despite being in effect for 66 years, it is still a dead letter legislation. This study discusses and analyses the socio-legal issues of a UCC in India in light of recent court decisions.

Constituent Assembly Debates

The Sub- Committee of the Fundamental Rights had included UCC as one of the Directive Principles of State Policy. Article 35 of the draft Constitution read: *The State shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India.*⁶ However, it was recommended that while a UCC is highly desirable, its application should be made on an entirely voluntary basis.



The motion was strongly contested by the Muslim representatives on the ground that interferences in Muslim Personal Laws would amount to infringement of their Fundamental Rights. Mohammed Ismail Sahib, Naziruddin Ahmed, Mahmood Ali Baig Sahib Bahadur and B. Pocker Sahib Bahadur proposed various amendments to Article 35 of the draft Constitution. They sought the insertion of a proviso to the effect of 'nothing in this Article shall affect the personal law of the citizen'.⁸No community shall be obliged to give up its own personal law which shall not be changed except with their prior approval Dr. Ambedkar, the principal architect of the Indian Constitution refused to accept the amendments which had been moved to this article. He was strongly in favour of a UCC and argued, *We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. This country has also practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far.*

Judicial Developments

In 1985, for the first time in Indian history, the Supreme Court in *Mohammad Ahmed Khan v. Shah Bano Begum*, directed the Parliament to enact a UCC. The court said that it is a matter of regret that Article 44 of our Constitution has remained a dead letter. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. This was reiterated in *Jorden Diengdeh v. S.S. Chopra* wherein the Court was of the view that a legislative intervention was warranted in order to provide for a uniform code of marriage and divorce. The court in *SarlaMudgal v. Union of India* insisted on the need for a UCC and held that fundamental rights relating to religion of members of any community would not be affected thereby.

Judicial trends have shifted slightly after SarlaMudgal's case. Although a uniform legislation is desired, the court in *PannalalBansilal v. State of Andhra Pradesh* noted that the implementation of such in one go may be counter-productive to the nation's unity and integrity. Laws should be uniformed gradually and not suddenly in a democratic country like India, where the rule of law prevails. The Law Commission, along with the Minorities Commission, should be entrusted with the task of examining the issue and drafting comprehensive laws. According to the court, the ruling in SarlaMudgal case is not final and just serves as guidance. It was only in 2003 that the Supreme Court of India reiterated its belief that an unified civil code would aid national unification by eliminating ideological inconsistencies.

Gender discrimination tactics disguised as religious traditions have been targeted by the courts during the past few years.

More recently on 23rd September 2015, the Gujarat High Court in *YunusbhaiUsmanbhaiShaikh v. State of Gujarat* ruled to ban Muslim Polygamy which it called as heinously patriarchal.

In *Prakash v. Phulavati*, the Supreme Court ordered a review of Muslim personal law practises including polygamy and triple talaq after just one month in October and ruled them injurious to public morality.



Last year, on October 12th, the Supreme Court reminded the federal government to put UCC into effect. There is complete uncertainty because of the multiple personal laws governing different religious practises, the court said, and it asked the government if it was willing to create a Uniform Civil Code across the country.

Observations

Arguments & Counter-arguments

Minorities argue that the Uniform Civil Code violates their Fundamental Right to Freedom of Religion. That they may practise and promote their religion according to their own particular regulations. But, how can a procedure (like triple talaq) be deemed holy even when it is not sanctioned by the religious text? Talaq-al-bidat is an impure kind of divorce in Islam. The Quran makes no mention of talaq-albidat, and Shias reject its legitimacy. Contrary to Shariat, the sunnis use an irregular form of talaq. In reality, several Muslim nations have outlawed gender discriminating traditions like polygyny and triple talaq.

If the communities are not ready after 66 years after Article 44 enactment, when will they be? What happened when the Shastric Hindu laws were amended in 1955-56? 32 Women's infanticide, widow remarriage, and child labour legislation may have been avoided if the problem of willingness had been addressed before to passage.

Part III of the Constitution does not include Personal Laws, which is another argument against its implementation. In *HarvinderKaur v. Harmandar Singh*, the court equated constitutional law to putting a bull in a china shop.

It is also questioned if it is feasible to harmonise the personal laws of distinct communities. While it is impossible to reconcile religious rites and practises, it is feasible to harmonise the secular aspects of such religions. Personal laws regulate secular activities and hence fall under state regulation. 38 Like the Goa Uniform Civil Code, a UCC would solely deal with the secular aspects of religion, not the basic religious behaviours. Thus, topics like upkeep fall within the category of secular acts rather than 'essential religious rituals.

Minorities fear losing their religious identity, which is the main impediment to its adoption. Part III of the Constitution provides Religious Freedom, Cultural and Educational Rights. The Indian Constitution protects religious freedom, freedom of conscience, and freedom to profess, practise, and spread religion. In addition, it ensures minority language, script, and cultural preservation as well as the right to construct and run educational institutions.

Balancing Right to Equality and Freedom of Religion

Fundamental Rights in India are not absolute in nature and the Right to Freedom of Religion as provided under Article 25(1) of the Constitution is no exception. Article 25(1) guarantees freedom of religion, freedom of conscience, and freedom to profess, practice and propagate religion to all persons in India. But at the same time, it is *subjected to the other provisions of this Part* including Right to Equality under Article 14 and 15. Therefore, the personal law is not immune from the intervention of the sovereign legislature.

The Constitution's authors intended to differentiate between the essence of a religion and other secular activities that may be linked with religious practise but are not part of the religion's core.



They agreed that if a religious practise involves a secular activity or falls outside the scope of social reform or social welfare, Parliament might legislate on it.

Article 25(1) of the Constitution solely protects religious acts that are vital to religion. Other practises are classified as secular activities and are subject to legislative regulation. This may include banning or restricting traditions like witchcraft, polygamy and triple talaq.

Uniform Civil Code vs. Common Civil Code

Not a common civil code but a uniform civil code. Uniform and common are sometimes used interchangeably, yet they mean distinct things. The words 'common' and 'uniform' refer to one regulation that applies to all areas or divisions of the country.

Uniform in article 44 indicates all communities must be regulated by the same social and gender equity principles, says S.P. Sathe. It calls for modernising and humanising personal laws. Uniform law does not always mean common law, but personal laws founded on the same ideas of gender equality and individual liberty. The phrase 'uniform' cannot be interpreted in this way for Article 44”.

As defined by the Black's Law Dictionary, a legislation is uniform when it applies equally to all people brought within the connections and circumstances provided for, when categorization is reasonable and naturally inherent in the subject matter.

Conclusion

People, especially minorities, are unaware of the Uniform Civil Code. True, they don't understand the code's full scope. That if the bill is passed, they will have to adopt the majority's religious customs and therefore lose their identity. The Parliament should pass a draught code. It must distinguish between core religious behaviours and associated secular practises. Age of the parties, marriage registration, etc. should be included in the marital validity provisions. People, especially minorities, should be certain that their religious freedom will not be harmed. This should be followed by a countrywide effort to gather public opinion. After reviewing the commission's recommendations, the Parliament should implement a uniform code for the entire country. Discriminatory practises like triple talaq must be judged by the standards of Articles 14 and 15. The Constitution's Right to Equality should take precedence over so-called religious practises. If we can't grant them all the rights at once, let us move slowly but steadily, says Leila Seth. Achieve gender-neutral legislation and a common civil code.

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