

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

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PROBING THE PRACTICALITY OF UNIFORM CIVIL CODE IN INDIA

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I. ABSTRACT

Uniform Civil Code provides for bringing the entire country under one civil law. Although it was encoded in the Indian Constitution with the intention of fostering national integrity and unity, it remains a disputed upon topic in India. This paper delves into probing the actual practicality of enforcing the Uniform Civil Code in India. It examines the Uniform Civil Code Bill of 2019 and delves into the analysis of its provisions, aims and objectives. Its objective is to understand whether it was actually needed and if it interferes with any of the Fundamental rights that are guaranteed to the citizens of India under part III of the Indian Constitution. The paper also seeks to comprehensively analyze the problems with the Uniform Civil Code and whether sticking to the status quo is a viable solution. The paper also seeks to delve into the complexities involved, and the political, legal and social aspects behind the implementation of Uniform Civil Code.

II. KEYWORDS:

Uniform Civil Code, Directive Principles of State Policy, Fundamental Rights, Personal Laws, Diversity

III. INTRODUCTION

The Uniform Civil Code has been provided for in Article 44 of the Indian Constitution. “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”² It is enshrined in part IV i.e. Directive Principles of State Policy. The key factor that differentiates The Directive Principles of State Policy from Fundamental rights is that the later is enforceable by law, while the former is not.

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² Constitution of India, 1950.

The objective of Uniform Civil Code is to bring the entire country under the mount of one common civil law. It seeks to replace the personal laws in matters of “marriage, divorce, succession, adoption, guardianship and partition of land and assets on all citizens without any discrimination.”³ The objective of the constitution makers while adding this provision was to harmonize the diversity of the India and provide a common ground to them in form of a common civil code. It is based on the premise that religion and personal laws are not essentially connected in a civilized society.

The courts have stressed the need for a Uniform Civil Code time and again. One such instance can be seen in the case of *Jose Paulo Coutinho vs Maria Luiza Valentina Pereira*⁴ where the learned bench held that no action has been taken in this regard when the constitution makers had hoped the State to provide for a Uniform Civil Code.

IV. RESEARCH OBJECTIVES

1. Understanding the need for a Uniform Civil code in a secular India, and analyzing its pros and cons.
2. Analysing the advantages as well as disadvantages of sticking with the status quo.

V. RESEARCH QUESTIONS

1. Does the Uniform Civil Code bill of 2019 breach and curtail the right to religious freedom?
2. Is the implementation of a common civil a dire need in the country?
3. Can Uniform Civil Code be implemented on such a large scale, and whether it actually guarantees uniformity?

³ Uniform Civil Code Bill 2019 by Shri Krupal Tumane- Section 4 clause (2) subclause (b)

⁴ Jose Paulo Coutinho vs Maria Luiza Valentina Pereira on 13 September, 2019- AIRONLINE 2019 SC 1035, (2019) 12 SCALE 338, (2019) 2 WLC(SC)CVL 560, (2019) 3 CURCC 555, (2019) 5 ALLMR 928

VI. RESEARCH HYPOTHESES

1. This hypothesis suggests that studying the practicality of a uniform civil code can shed light on its impact on various aspects such as religious diversity, legal coherence, and gender equality in India.
2. It also suggests amendments in the current personal laws that are in practice instead of completely relying on the Uniform Civil Code to replace them.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

The sources that have been referred to in the paper have aimed to provide a clear stance on the Uniform Civil Code.

The main Source that provides us with the idea of implementation of the UCC being the Constitution of India 1950 itself. The intention behind it was to foster uniformity and unite the citizens by means of a common law.

The case of Shayara Bano Vs Union of India provided us with the jurisprudence that to counter a regressive practice in a personal law, a Uniform Civil Code is not necessarily needed. It can also be done by establishing a separate law regarding it.

The report of The Law Commission of India 2018 remarked how there was no dire need for the Uniform Civil Code in the Country.

As mentioned later in the paper, an Article by Saumya Kalia from Swaddle provides us with the opinion of Six Experts regarding the Uniform Civil Code. While some agree with its implementation, some do not find it relevant and have convincing opinions regarding the same. Saumya Saxena ⁵remarked, "For me, the problem with the UCC is its potentially patronizing template rather than the idea of uniformity itself. As we saw with the Muslim Women's Protection of Rights on Marriage Act, and the Citizenship Amendment Act, and then the laws criminalizing inter-religious marriages in UP and MP as 'love jihad,' many of these legislative interventions target minorities rather than facilitate women's rights."

An Article by India today talks about how a Uniform Civil Code will impact the different communities in India, some of which have been cited in the paper. It has successfully covered on how the impact of the implementation of the UCC will be evident within every Community. These were some of the main literary sources referred in this paper along with many other.

IX. MEANING

Uniform Civil Code in simple language means providing the country with a common set of civil laws that will govern the citizens in place of their personal laws. The objective behind the implementation of the Uniform Civil Code to provide a cohesion, or a unifying factor among the citizens of the country. The aim is to govern the citizens by virtue of them being Indians and not merely members of their respective religions. The concept of a Uniform Civil Code is rather grey. The intention behind it is good,

⁵ Saumya Saxena is a former consultant with the Law Commission of India and has researched personal law, gender, religion, and comparative constitutionalism.

but the implementation would require a lot more than just good intent, owing to the fact that it is such a contentious issue in India.

X. THE ISSUE OF CONFLICT WITH RELIGIOUS SENTIMENTS

India is a country of exquisite culture and home to many religions. The religious laws that are followed in India to direct the actions of the people of their respective communities are deeply rooted in culture. Some of its examples include The Hindu Marriage Act 1955, Muslim Personal Law (Shariat law) Application Act 1937, Indian Christian Marriage Act 1872 etc.

When the discussions regarding the Uniform Civil Code were held in the constituent assembly for the first time in November of 1948, Smt. Hansa Mehta a member of the Drafting Committee was most active in trying to make the Uniform Civil Code justiciable. ⁶ She urged the need for the Citizens to be recognized by virtue of them being Indians, and not merely members of their respective religious groups. However, the provision was strongly contended by Muslim members of the Drafting committee and soon after, amendments were suggested to the then Article 35 that laid the provision of the Uniform Civil Code. The question that lies here is that are Indians even willing to part with their respective personal laws? The answer is relatively complicated. While there is a major portion of the population willing to accept these changes, there is also a portion that contends the very idea of tampering with their personal laws specially the Indian Muslims.

The foremost contention is that the implementation of the Uniform Civil Code would be a direct threat to the religious rights mentioned under Article 25- Article 28 of the Indian Constitution under part III. It was held in the case of *Pannalal Bansilal Pitti and Ors. v. State Of Andhra Pradesh and Anr* that “A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation.”⁷ However this contention would fail constitutionally as Article 25 (2) also says that “nothing in this article [Article 25(1)] shall affect the

⁶ Lekshmi Parameswaran- Debates in the Constituent Assembly and thereafter on the Uniform Civil Code. India Policy Foundation. March 2020.

⁷ *Pannalal Bansilal Pitti and Ors. Vs State of Andhra Pradesh* 1996 AIR 1023 1996 SCC (2) 498 JT 1996 (1) 516 1996 SCALE (1)405

operation of any existing law or prevent the State from making any law.” This provision in itself implies that this article would not be a hindrance in any laws that are made by the state. Hence, there is no question of Article 44 being unconstitutional. Another Contention made by certain Muslim groups majorly revolved around two topics namely- The practice of Polygamy and Triple Talaq. Polygamy is permitted under the Shariat Act for Muslim Men; however, it is a punishable offense in India. The implementation of Uniform Civil Code would completely shut off the practice of polygamy. However, the reports of National Family Health Survey NFHS 2019-2021 claimed that only 1.4% of the women reported their husbands to be married to another woman⁸. This proves the point that the contention is not for the ban of polygamy itself, but the main ground for contention is that if something is permissible to people by their personal laws, which in this case has evolved through customs, the state must not meddle with these rights.

As far as the Triple Talaq is concerned, ‘Talaq-e-bidat’- In this kind of divorce a Muslim man can easily divorce his wife by saying the word ‘talaq’ more than one time in a single ‘tuhr’ (a time period between two menstrual cycles) or in a period of tuhr after consummation.⁹ This practice was contended by Muslim women and women activist groups. As a result, Triple Talaq was banned by the Supreme Court in the case of *Shayara Bano vs Union of India and Ors*¹⁰. The point behind this argument is, that in order to nullify a rigorous and outdated practice of a personal law, the need for a separate Uniform Civil Code does not seem practical. A report by the Law commission of India in 2018 said that UCC ‘neither necessary nor desirable.’¹¹

XI. THE PROS OF THE UNIFORM CIVIL CODE

The propagates of the Uniform civil code argue in its favour for multiple reasons, but most of them are related to Equality. The concept of Equality is enshrined under

⁸ Rampal N and Rampal N, “It’s Not Just Muslims Who Have Multiple Wives in India. But Practice Has Declined across Faiths” (*ThePrint*, May 18, 2023) <<https://theprint.in/india/its-not-just-muslims-who-have-multiple-wives-in-india-but-practice-has-declined-across-faiths/1578799/>>

⁹ Anubhav Pandey, “Arguments against Implementation of Uniform Civil Code - iPleaders” (*iPleaders*, June 16, 2017)

¹⁰ Indian Kanoon, *Shayara Bano vs Union of India and Ors*. Writ Petition (C) No. 118 of 2016

¹¹ <https://archive.pib.gov.in> Law commission report on Reform of Family Law 2018.

Article 14 of the Indian Constitution. With personal laws governing the life of the people, some people are entitled to certain rights, while the others are not. For example, with the supremacy of personal laws, it is lawful if A Muslim man has multiple partners but, the same would be an offense if done by a Hindu man.

With Uniform Civil code, polygamy would be an offense irrespective of the religion of a person. The personal Laws that prevail today are a result of customary evolution. Some of its provisions in today's light seem rather outdated and conservative. Some of the examples include limited autonomy for women in matters of marriage and even inheritance. In this regard need of a Uniform Civil Code was stressed in *Smt. Sarla Mudgal, President, Kalyani & Ors vs Union Of India & Ors*¹²

It will impact the provisions mentioned in the personal laws in many ways, for example If a Parsi woman marries outside of her religion, she is not entitled to the Parsi customs and ceremonies anymore¹³. If the Uniform Civil Code is implemented this provision will be scrapped off.

XII. CONS OF THE UNIFORM CIVIL CODE

Implementation of uniform civil code can act as a threat to India's diversified culture where people's deep rooted personal and cultural beliefs will be challenged. Such a situation would lead to social unrest and instability in the country. We must not forget that constant social unrest was one of the main reasons for something as grave as the Partition of the Country.

Although the uniform civil code has been provided for the purpose of unification of the citizens, it is highly unlikely it would roll out that way. UCC is something that is not demanded by the people on an immediate basis or its dire need has rarely been felt in the country. It is highly unlikely that people would be willing to follow something that they have not asked for and specially if it threatens their universally followed personal laws. The need for Uniform Civil Code is challenged by the fact

¹² Smt. Sarla Mudgal, President, Kalyani & ors vs Union Of India & Ors on 10 May, 1995
1995 AIR 1531 1995 SCC (3) 635
JT 1995 (4) 331 1995 SCALE (3)286

¹³ Parsi Marriage and Divorce Act of 1936

that people do not wish to part with their own laws. This is evident from the nationwide protests that happened after the Uniform Civil Code Bill was tabled in the parliament.

Also, for a law to be successful it must be governed by standards of social legislation, and since uniform civil code does not fall within its ambit, the extent of its success is still a question. Though the personal laws can be a bit rigorous and conservative in nature, replacing them entirely with new set of laws is not a practical option, since this may also create distrust among the citizens towards the government. Some people have also posed the question whether the governing body itself is ready for the implementation of the UCC and it would require speedy disposal of affairs, and it will be more expensive. Managing the civil affairs of the country with the highest population would require a huge amount of machinery, funds, infrastructure etc.

Another disadvantage is that a huge amount of monetary wastage will befall in implementing such laws and planning education and training programs for people to follow them. The laws can receive severe backlash from certain communities (specially minorities) that may sabotage their religious and cultural beliefs.

XIII. IS THE NON-IMPLEMENTATION OF THE UNIFORM CIVIL CODE THE ONLY OPTION?

As of now, the citizens of India are governed by their respective personal laws throughout the country barring the states of Uttarakhand and Goa. The UCC in Goa follows the Portuguese Civil Code of 1867. As mentioned earlier Uniform Civil code is a grey area in itself. The extent of its success cannot be prophesized, but what is sure is that it will lead to a lot of contentions which will further amount to social unrest. But it can also not be dismissed that some practices of the personal laws are conservative, unequal and outdated in light of current time.

Instead of totally implementing a uniform civil code what is better is to make amendments to personal laws of such nature. For example, the UCC was not needed to ban the practice of Triple Talaq. In that manner there will be reforms within the

personal laws and people will be able to retain their religious identity. With the presence of an already existing Common Criminal Code it will be a balance of both.

XIV. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

As the hypothesis suggests that studying the practicality and relevance of the Uniform Civil Code would be able to shed light on its political, social and legal aspects, the **first** hypothesis would partly fail because as proved in the paper the question of a Uniform Civil Code is rather grey. It has a lot of pros which include fostering equality and uniformity however the cons far outweigh the pros and pose a direct question at the success of the Uniform civil Code.

The second hypothesis would succeed as previously the conservative aspects of personal laws have been challenged in courts and been amended or completely banned as was visible in the case of *Shayara Bano vs Union of India*. This will also lead to religious laws becoming at par with each other.

As Flavia Agnes, a women's right lawyer remarked "Though there are several discriminatory practices within the different personal laws they need to be addressed within the confines of their own personal laws. A UCC will not solve this problem. What we need is uniformity in rights and not a Uniform Civil Code."¹⁴

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