



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Uniform Civil Code – Issues and Challenges and How to circumvent them?

Varun Ranganathan^a

^aGovernment Law College, Coimbatore, India

Received 16 September 2022; *Accepted* 24 September 2022; *Published* 01 October 2022

The Uniform Civil Code has proposed legislation which as per the name, suggests uniformity in personal laws to the citizens of India regardless of religion, gender, or sexual orientation. The concept of implementing a Uniform Civil Code was debated from the period of British rule in India. The Legislation enacted towards achieving the goal of UCC can be categorized into two heads viz, pre-independence and post-independence. The topic of the Uniform Civil Code has revolved around the Indian Judiciary especially The Supreme Court in several instances. The major Issues and Challenges concerning the implementation of the Uniform Civil Code are its conflict with the constitution, the opposition of minorities, and practical difficulty due to diversity. The need for a Uniform Civil Code is inevitable due to reasons of preventing discrimination, unifying personal laws, preserving the right of women, simplification of the law, and enhancing the delivery of justice. The challenges in implementing the Uniform Civil Code can be circumvented by making it coexist with other personal laws and spreading awareness about its benefits. The enactment of the uniform civil code is essential for the advancement of secularism. The benefits of the Uniform Civil Code outweigh all problems and challenges.

Keywords: *uniform civil code, one nation one principle, article 44, constitution, right to equality.*

INTRODUCTION

India is the Secular Republic that confers fundamental rights upon its subject. The Constitution of India enshrines fundamental rights to its citizens which includes are inclusive of the right to equality under Art 14¹ and the right to profess, propagate and freely practice one's religion under Art 25². Whereas, the personal laws of India such as Laws of Marriage and Divorce, Alimony, Child Custody and Adoption, succession, guardianship, etc are predominantly governed and administered according to the religious scriptures of various communities, which differ from one another. The Uniform Civil Code has proposed legislation which as per the name, suggests uniformity in personal laws to the citizens of India regardless of religion, gender, or sexual orientation. The Uniform Civil Code is also prescribed in Art 44³ of the Indian Constitution. The Notion of the Uniform Civil Code is based on the principle of 'One Nation One Principle'. The implementation of the Uniform Civil Code has been debated for several decades and continues to be debated to date. It is because of the conundrum that arises which is - whether The Uniform Civil Code which implements uniformity of personal laws to everyone regardless of any ground enforces the fundamental right to equality before the law under Article 14 or violates the freedom of religion granted under Art 25.

The object of this article is:

- To extensively analyse the benefits, challenges, and problems concerning relevant cases,
- To identify whether how it violates fundamental rights,
- To suggest the means to circumvent the problems and challenges.

RESEARCH METHODOLOGY

The research paper is written on a descriptive research methodology. The data collected are from secondary sources such as commentaries, government archives, reported case laws, and bare acts and also include internet articles.

¹ Constitution of India, art 14

² Constitution of India, art 25

³ Constitution of India, art 44

HISTORICAL BACKGROUND OF THE CODE

The concept of implementing a Uniform Civil Code Code was debated from the period of British rule in India. In 1840, The Report of Lex Loci pointed out the requirement of uniformity in the codification of the Laws of India, relating to contract, evidence, and crime but advised the personal laws of Hindus and Islam out of the ambit of uniform codification due to the complexity in both religions and inconsistency in the laws followed by them.⁴

LEGISLATIVE FRAMEWORK

Pre-Independence: The first legislative process towards uniformity in civil code which removes gender inequality was the reforms in the Hindu Widow Remarriage Act of 1856.⁵ Subsequently, the Indian Marriage Act, of 1864⁶ and the Indian Succession Act, of 1865⁷ removed the inequalities in Christian Marriage and safeguarded women's economic interests respectively. During the 20th century, the need for a code that is uniform in nature was demanded by female activists which further led to the formulation of the Hindu inheritance (Removal of Disabilities) Act of 1928⁸ which allowed Hindu women to inherit their property as a matter of right along with the Married Women's Property Act, 1923⁹.

Post - Independence: During the constituent assembly debates and in the early 1950s, Then Prime Minister Jawaharlal Nehru and his supporters advocated for the formulation and implementation of the Uniform Civil Code.¹⁰ Dr. B. R. Ambedkar the then Minister of Law also advocated for a Uniform Civil Code to be an integral portion of the fundamental rights¹¹ in Article 35 with an exception to the personal laws. However, he recommended a voluntary

⁴ AC Banerjee, *English Law in India* (Abhinav Publications 1984) 134

⁵ Hindu Widow Remarriage Act 1856

⁶ Indian Marriage Act 1864

⁷ Indian Succession Act 1865

⁸ Hindu inheritance (Removal of Disabilities) Act 1928

⁹ Married Women's Property Act 1923

¹⁰ Nandhini Chavan & Qutub Jehan Kidwai, *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code* (Hope India Publications 2006) 90

¹¹ Vikas Pathak, 'Ambedkar favoured common civil code' (*The Hindu*, 1 December 2015)

<<https://www.thehindu.com/news/national/ambekar-favoured-common-civil-code/article7934565.ece>>

accessed 01 June 2022

implementation of the Uniform Civil Code. But the representatives of the Islamic religion criticised it and resisted such implementation, instead preferring religious personal laws. Hence, the uniform civil code was not formulated and was consequently included in Part IV of the Indian Constitution under Art 44 as a directive principle of state policy. However, the suggestions of Ambedkar the then Minister of Law played an instrumental part in amending the Hindu Personal Laws which were collectively called “Hindu Code Bills”. These bills which ensured uniformity include the Hindu Marriage Act 1955,¹² the Hindu Succession Act 1956,¹³ the Hindu Adoption and Maintenance Act 1956¹⁴ , and the Hindu Minority and Guardianship Act 1956.¹⁵ Later, the Special Marriage Act 1954¹⁶ and The Dowry Prohibition Act 1961¹⁷ completed some of the voids of its precursors, the former introduced a framework for inter-religious and inter-caste marriages and rules for divorce and dissolution whereas the latter criminalized giving, accepting, and demanding dowry.

THE ROLE OF THE SUPREME COURT

The topic of the Uniform Civil Code has revolved around the Indian Judiciary especially The Supreme Court in several instances. Therefore, it becomes crucial to identify the stand of the apex court in this matter by comprehending its interpretation.

In the landmark precedent of *Mohammed. Ahmed Khan v Shah Bano Begum*, the apex court decided that women belonging to the religion of Islam have the right to seek maintenance under Section 125 of the Criminal procedure code 1973, the code has an overriding effect over the personal law due to its secular and unambiguous nature. The Then Chief Justice of India Y. V Chandrachud also observed the necessity for the enactment of a uniform civil code for achieving

¹² Hindu Marriage Act 1955

¹³ Hindu Succession Act 1956

¹⁴ Hindu Adoption and Maintenance Act 1956

¹⁵ Hindu Minority and Guardianship Act 1956

¹⁶ Special Marriage Act 1954

¹⁷ Dowry Prohibition Act 1961

national integration by removing discrimination against the people of different religions and emphasised enacting a uniform civil code.¹⁸

- In the case of *Sarla Mudgal v Union of India*, the provisions of the marriage of personal laws were at issue. The apex court held that conversion to another religion for another marriage would not dissolve the previous marriage, however, will be a ground for divorce, the subsequent marriage would be considered void and such a person can be punished under section 494 of IPC for the offence of bigamy. The Supreme Court further added the uniform civil code would prevent people from abusing the differences in the personal laws of various religions. The court also made the Ministry of Law and Justice in charge to submit the actions taken toward securing a Uniform Code.¹⁹
- Contrary to the previous judgements, in another landmark case of *Pannalal Bansilal Patil v State of Andhra Pradesh*, the bench decided that the highly desirable Uniform Code, if enacted outright might be fruitless to the integrity of the nation.²⁰
- The Supreme court in the case of *John Vallamattom and others v Union of India* amended the Indian succession act of 1925 by removing Section 118 of the act, in addition to that, it also indicated that the enactment of the UCC would put an end to the possible loopholes in the domains of divorce, marriage, inheritance, and property existing in various personal laws.²¹
- Recently, The Constitutional Bench in the *Shayra Bano v Union of India* case rendered the practice of Talak-ul-bidder invalid and ensured the right to equality conferred under the Part III of the Indian Constitution. Though this judgement does directly advocate for the enactment of the UCC, this case points out that the personal laws which violate fundamental rights are void to the magnitude of the violation.

¹⁸ *Mohd Ahmed Khan v Shah Bano Begum & Ors* [1985] AIR 945

¹⁹ *Smt Sarla Mudgal & Ors v Union of India & Ors* [1995] AIR 1531

²⁰ *Pannalal Bansilal Pitti & Ors Etc v State Of Andhra Pradesh & Anr* [1996] AIR 1023

²¹ *John Vallamattom & Anr v Union of India* [2003] AIR SC 2902

ISSUES AND CHALLENGES CONCERNING THE IMPLEMENTATION OF THE UNIFORM CIVIL CODE

Conflict with Constitution: The foremost challenge that hinders achieving uniformity in personal law is the clash between freedom of religion conferred under Art 25 and Art 14 which confers equality and equal protection before the law. This is because personal laws are derived from religious texts, they are considered religious beliefs and hence they should remain untouched.

The opposition of Minorities: The next serious concern is opposition from minorities. From the minorities' perception, the uniform civil code is perceived as it would prevent them from following their pious customs and they would be coerced to adhere to the religious customs of the majority group. They consider this as an encroachment on their right to practice their faith and religion. Their perception is logical and must be addressed with care and caution.

Practical difficulty due to Diversity: India, as a secular state is a hub that encompasses people who follow several religions such as Hinduism, Islam, Christianity, Jainism, Buddhism, Sikhism, and Zoroastrianism. These religions have distinct faiths and follow and preach their version of personal laws which vary with religions. Therefore, it will be difficult to enact one common legislation for all. The proposed legislation will not be assented to by all communities and it is also unreasonable to expect people with different cultures and beliefs to adopt the unified system.

WHY IS THE UNIFORM CIVIL CODE NECESSARY?

The need for a Uniform Civil Code is inevitable due to the following reasons among others:

Prevents discrimination: India being a secular state guarantees all its citizens the right to equality and equality before the law and also the right against discrimination based on religion, caste, gender race, etc. The implementation of the code is deemed as an upgrade in the execution of the fundamental rights and is a reflection of achieving the pinnacle of protection of such

rights. Ironically, the construction of the code strengthens and holds up the foundation of secularism.

Unifies the personal laws: The formulation of a Uniform Code unifies the personal laws about the domains of matrimonial laws, dissolution and divorce laws, laws of succession and inheritance, laws of adoption, and guardianship laws and upholds the description of unity in diversity by promoting national integration. The dissolution of differences in the existing personal laws would act as a solution to avoid confusion and misuse of personal laws.

Preserves the Right of women: The enactment of the Code in addition to unifying the personal laws would also aim to protect women by stripping off all violations of the rights of women present in the personal laws and ensuring gender equality. This code would make the law right by entitling women to their legal rights and uplifting the standard of women.

Simplifies the law and enhances the delivery of justice: The introduction of the Code simplifies the complexly structured personal laws which, paves way for speedy trial and enhances the justice-delivering process of the judiciary.

Advancement towards progression: The implementation of the code removes the existing loopholes in the law and moves the nation towards progression.

SUGGESTIONS TO CIRCUMVENT THE CHALLENGES IN IMPLEMENTING A UNIFORM CIVIL CODE

Co-existence with other existing religious laws: Enacting a UCC instead of being the only governing legislation of personal laws, if followed in coexistence with other personal laws for the time being until majorly accepted helps in combating the conflict about violation of the free practice of religion. The classic case in point is Section 125 of the Cr. P. C,²² which acts as a uniform code for the law of maintenance irrespective of religion alongside the existing personal laws relating to maintenance. If both parties of dispute mutually agree to follow the religious personal laws over the enacted uniform civil code, then the personal laws can be used to deliver

²² Code of Criminal Procedure 1973, s 125

justice which avoids the conflict between the free practice of religion and equality. But, if one party prefers the uniform code over the law, then in such cases the uniform civil code can be given priority. This also avoids the misuse of personal laws.

Source of the Code based on Natural Justice: To overcome the opposition of minorities and to win their approval, the source of the proposed legislation must be purely based on natural laws such as equity, justice, and a good conscience and not based on any religion. This is because the principles of natural justice remain the same irrespective of religion. This overcomes the perception of minorities that they would be forced to follow the religious practice of the majority.

Spread Awareness: The government of India before enforcing the code must take appropriate steps by spreading awareness to the general public regarding the benefits of having a UCC because enforcing the code, does not feel like an imposition but is embraced and welcomed by the citizens.

Make Use of the existing legislation: Before enacting a new uniform code, the government can use the existing system of UCC prevailing in the status of goa as a good starting point and legalise the suitable provisions across the nation.

CONCLUSION

After considering the aforementioned viewpoints, the enactment of the UCC is essential to the advancement of secularism. The benefits of the Uniform Civil Code outweigh all problems and challenges. The issues and challenges revolving around the implementation of a uniform civil code act as a nightmare but can be resolved with an ideal approach whereas the notion of 'One Nation One Principle' is the dream of the constituent assembly which should come true for the promotion of unity and integrity of the nation.