

Integration of Uniform Civil Code and Personal Law Disputes

Mrs. Janhavi Madhukar Zanje

Assistant Professor in Law, Maratha Vidya Prasarak Samaj's Law College, Nashik

ABSTRACT

In terms of national religion, India does not adhere to any since it is a secular nation and state. The primary focus of this article is the legal framework surrounding the idea of a uniform civil code. In the first section, "Introduction to the Uniform Civil Code," the term is defined and the history of the law is explained. Regardless of a person's religion, caste, language, or tribe, all Indian citizens shall be subject to the same secular civil laws. All of India's secular civil laws, including those pertaining to contracts, property transfers, and criminal law, are based on a common code. It will also regulate the acquisition and administration of property, as well as the personal laws pertaining to adoption and maintenance, marriage, divorce, and inheritance. Article 44 of the Directive Principle of State Policy (DPSP) in Part IV of the Constitution mandates that the state create a Uniform Civil Code. Regardless of the fact that these principles are not legally binding, they are essential for running the country. One is the requirement that states create a uniform civil code as stated in Article 44 of the constitution. As we move further with the paper's methodology, we'll talk about how the Uniform Civil Code's execution relates to secularism and how the code itself came to be. The country might fall apart, and with it, the peace and harmony that has long existed among its citizens. It goes on to talk about constitutional protections and the Uniform Civil Code. The paper also discusses the Indian judiciary's stance on the Uniform Civil Code and its judgements.

Keywords: Uniform Civil Code, Constitution, Indian Citizens

INTRODUCTION

As a secular nation and state, India does not adhere to any particular religion as its national tenet. That the state will not rely on religious institutions to make choices, that it will stay out of religious affairs, and that religion will stay out of the way of the state's effectiveness are all parts of the same picture. India has been on the rise since the 1990s, and with good reason: it is the most populous country in the world and the biggest democracy by far. Its economy is booming, and it has a formidable military and pervasive cultural influence. Many different languages, cultures, and faiths coexist in India, making it a very varied country.

The fact that the federal government and the individual states each have some degree of authority is another reflection of this. In addition to being deeply ingrained in Indian society and politics, religion has long been the bedrock of Indian culture. Religion is an integral part of Indian culture. It is deeply ingrained in the fabric of Indian culture. In India, more than 93% of the population identifies as religious. While 8.5% of Indians identify as Hindu, other main religions practised by the country's

inhabitants include Islam, Christianity, Sikhism, Buddhism, Jainism, and Christianity. Despite the influence of major faiths like Christianity, Hinduism, and Buddhism, there are still many minor tribal traditions. This varied setting calls for an examination of the Uniform Civil Code idea.

Since the beginning of time, the people of India's many faiths and languages have lived under their own sets of rules and regulations. As a result, various groups of persons are subject to separate personal laws. From religious minorities to social strata, every group has its own set of particular laws. As far as Hindus are concerned, there are a number of statutes that serve various goals, including those pertaining to marriage, adoption, succession, guardianship, and maintenance. For the sake of social harmony, Muslims and Christians are subject to different sets of personal laws. This is due to the fact that different faiths have diverse canons, rituals, and practises; consequently, it is possible for one religion's teachings to have an impact on another. Questions of succession, marriage, divorce, inheritance, adoption, support, guardianship, etc., are plainly addressed by personal law. Part of the problem is that it's hard to distribute justice fairly, and various situations call for different kinds of judgements. When the idea of a uniform civil code was first seriously considered in the Constituent Assembly in 1947, it was a step towards national consolidation in an effort to address the challenges associated with ensuring that justice was applied consistently.

Article 44 of the Indian Constitution, which deals with the Directive Principles of State Policy, states that the government must work towards creating a national civil code that all Indian people must adhere to. There has been no progress in accepting and implementing the constitutional mandate in the past sixty years or more. The reason for this is that, despite our rhetoric about unity and fraternity, our views on the relationship between the Hindu and Muslim communities are frequently rooted in the violence that occurred during independence and the animosity that has persisted for the past hundred years.

BACKGROUND

At the turn of the twentieth century, demands for gender equality, secularism, and women's rights sparked a campaign for a UCC. The historical examination that begins with the colonial era may find it relevant. Different systems of personal laws coexist in multiethnic societies like India. During the British Raj, personal laws were initially formulated, mostly for the benefit of Hindus and Muslims. Since the British saw religious meddling as completely counterproductive to their amicable trade, they provided legislative protection to specific areas of Hindu and Muslim law. There was a patchwork of laws that made up the legal system in the early 1800s. The need to organise and clarify the legal system arose from the perplexing situation of law's applicability. As a result, they made the first move towards law codification. They came to the realisation that the country's general law desperately needed updating. It seems that achieving certainty and uniformity was the goal of the codification.

Academics from both societies worked together to make the codification of laws a reality. The subsequent pivotal moment in UCC history occurred during the constituent assembly deliberations, when the vision for an independent India was conceived. The assurances made by Nehru and Gandhi that the legislation of UCC would be postponed, although it would remain as a desire of the State, informed the decision to place it in the Directive Principles of State Policy, Article 35 in the draught and Article 44 in the final Constitution. Nevertheless, there were strong objections to this compromise, with

the argument being that religiously based personal laws serve to further divide the country by separating different parts of people's lives. The UCC debate in the decades that followed arose out of the need to find a middle ground between the competing claims to inviolability made by individual and collective rights. Despite heavy resistance from traditionalist Hindus, the Indian government eventually approved the Hindu Code Bill in the first decade after independence. It marked a watershed moment in the history of democratic states. A few legislative reforms were enacted to enhance women's conditions prior to independence in 1947. One such example is the Dissolution of Muslim Marriage Act of 1939. Later on, the state's legislative branch enacted a number of measures aimed at bringing the country together under a single civil code, including the Special Marriage Act 1954

- The Hindu Code 1955-56
- Dowry Prohibition Act 1961

UCC received major attention in the height of the Shah Bano case in 1985. It heads too many debates over the controversial issue of UCC.

IMPLEMENTATION OF UNIFORM CIVIL CODE

In order to ensure that all people are subject to the same laws, the framers of the Constitution sought to achieve this goal through the inclusion of Article 44, which establishes a Uniform Civil Code. A Uniform Civil Code for the People to be Sought After by the State, as stated in Article 44 of the Constitution. Carefully phrased, the section urges the state to "strive" for, rather than impose, a single civil code. There is no strict deadline and no overwhelming sense of pressure. We must not overlook the other parts of the constitution that guarantee equal protection under the law and equality before the law while interpreting this article.

Harmonising group interests leading to the common good is the key to a successful democratic process. On the other hand, UCC as an academic exercise or a solution to get rid of the evil nature of the legal system driven by hidden agendas can only cause more harm than good. To implement the spirit of article 44, it is necessary to disregard the decision of the people. In keeping with the other clauses of the constitution, the actual purpose of this one is to create a pure, homogeneous society that is not divided along religious or caste lines.

It is undeniable that India is a diverse country with many religions, each with its own set of personal rules on family problems. A universal civil code is not an ideal; rather, it is a goal towards which we should move slowly but surely, as Krishna Iyer put it.

Learn to stand still; it's an art form. Nationalising every personal law that serves the public interest is an obligation of our nation's judges, jurists, and legislators.

This combination of strategy and principle will be important in establishing the new dharma, a code that is progressive, fair, common, and familial. An equalisation of family connections among people of diverse religious persuasions who are similarly situated on temporal matters can be reflected in a single civil code. Unfortunately, the idea that our founders saw as a lynchpin in maintaining the country's unity and integrity remains just that—a dream—even after 70 years of independence. Therefore, it is crucial to grasp the stance of different religious groups on this matter right now.

UCC AND CONFLICTS OF PERSONAL LAWS

Personal laws in India

India is a melting pot of cultures and peoples. India is home to a wide variety of world religions and cultures. Across India's long history, religion has played a significant cultural role. The country's legal framework and long-standing cultural norms both promote religious tolerance and diversity. A nation whose constitution guarantees residents' right to pursue their own moral compass, even though the very idea of secularism seems to go counter to the actual laws of the land. Marriage, adoption, guardianship, divorce, succession, and other personal rules vary among the many religions practised in this increasingly chaotic melting pot. The laws governing marriage and divorce vary greatly among India's many groups. Family laws in India vary between religions, despite the fact that these cultures coexist inside a single nation.

The reason behind this is that the religious beliefs and practises of a community's members have a profound impact on their daily life, including their customs, social norms, and religious interpretation. Marriage, dissolution of marriage, property rights, and inheritance are all governed by specific codified statutes, which include:

- There are several marriage laws in India. Some of them include: the Indian Christian Marriage Act of 1872, which applies to most of the country except for parts of what was once Travancore-Cochin, Manipur, and Jammu & Kashmir;
- The Cochin Christian Civil Marriage Act of 1920, which applies to parts of Travancore-Cochin;
- The Anand Marriage Act of 1909, which is for Sikh marriages;
- The Muslim personal law (Sharia) Application Act, 1937, which applies Sharia law
- Muslims in India; and the Parsi Marriage and Divorce Act, 1937.
- The Hindu Marriage Act of 1955 (enforced not only on Hindus, Buddhists, and Jains, but also on everybody not bound by the laws of Islam, Christianity, Parsi, or Judaism).

Conflict between personal laws and Part -III of the Indian Constitution

Two scenarios arise which are to be discussed to determine the conflicts:-

- a. The provisions of Part-III of the Indian constitution contradict with personal laws, both codified and customary in practise.
- b. Personal law disputes, which seek to overhaul statutes deemed arbitrary and in violation of Article 25 of India's constitution.

Part III of the Indian Constitution and personal laws have been a contentious issue for the Indian court since the constitution's creation.

The Narasu Appa Mali Case is a seminal and consequential ruling in this area that helps to clarify the situation.

State of Bombay V. Narasu Appa Mali

Articles 14, 15, and 25 of the Indian Constitution were used to challenge the Bombay Prohibition of Bigamous Marriage Act of 1946. The main questions in the case were: a) Does Hindu personal law constitute law according to Article 13(3) (b) and Article 372(3), Explanation 1?

b) Does equality under the law come into violation when one religious community's personal law is changed without corresponding changes in the laws of other religious communities?

The court ruled that: c) Neither the law referred to in Article 13(3) nor the law in force referred to in Article 372(3) includes personal laws. It was determined that the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 did not violate Article 14 since the state could implement social changes gradually.

2. The general welfare of the people of the state will take precedence over religious practises if they conflict with public order, morality, or a social welfare programme, the responsibility of which falls on the state.

A THEORY OF CIVIL LAW CODIFICATION FROM THE PERSPECTIVES OF DIFFERENT RELIGIONS

Muslims undoubtedly constitute India's biggest minority group. Opinions on the matter of a UCC for all citizens vary within the Muslim community. When it comes to replacing Muslim personal law with Common Civil law, the public opinion—if that term could be used to the opinions of the vast majority—is vehemently opposed. Muslim personal law would be fully integrated into the Indian Civil Code in the long run, according to sociologist-cum-jurist Dr. Thahir Mahmood. Instead of proposing an entirely new body of common law, he is in favour of changes to Muslim personal law. Although progressive Muslims' opinions are well-reasoned, they are numerically weak. Because of their animosity against UCC, many intellectual Muslims who are aware of the shortcomings of their personal laws refrain from pursuing reform.

Muslims calling for changes to current personal laws say that Muslim personal laws in India are based on ideas that are unrelated to Islam's actual teachings. They make the point that the ability to make amendments to the Quran does not rule out liberal interpretations. No one from the Christian, Parsi, or Jewish minority groups has spoken out against the need of Article 44. Neither they nor anybody else has come out in support of the mandate. It seems like they've decided to sit tight for now.

The UCC must be implemented promptly in response to the desires of the majority of Hindu followers. But there are prominent Hindus who have spoken out against UCC and who would rather see religion preserved as a separate body of law from secular law.

REFORM OR UNIFORMITY?

Unfortunately, the need for UCC is based on an oversimplified interpretation of reality. Due to the complexity of the problems and the sheer size of the country, solutions developed in Europe in the 19th century cannot be applied to India. India must decide if it was necessary to modify personal laws or achieve civil law uniformity in order to modernise. India has not only failed to establish a universal code of conduct, but it has also failed to do so even within its many religious communities. Because of the politicisation that results from differences in personal laws, UCC is now practically difficult to implement.

Without a clear idea of what a UCC is and does, the question of whether or not one is necessary will remain unanswered. Despite its calls for legislation, the Supreme Court's own decisions show how inadequate its interpretation of the UCC is. The profound difficulties with personal laws may be too

great for uniformity to solve on its own.

In the 1985 case of MOHQMMED AHMED KHAN v. SHAH BANO BEGUM and ors, the Supreme Court first mentioned a Uniform Civil Code (UCC) when it urged the federal government to pass one for the sake of national unity. Given that the legislation that has been interpreted and applied in that case—section 125 of the CRPC—has long been helpful to apply across the adherents of all religions, according to their personal laws, it is perplexing to mention the common civil code in relation to the facts of this case. In a public interest litigation (PIL) ten years later, the court again requested the government to join the UCC in an effort to criminalise Hindu men who leave their wives without obtaining a divorce and who then convert to Islam in order to have a second marriage.

The state's legislative branch sought to unite the country under a UCC shortly after independence..

- a. Special Marriage Act 1954
- b. The Hindu Code 1956
- c. The Dowry Prohibition Act 1961

The vast majority of folks still haven't paid attention to these laws. Traditional dislike of marriage, as opposed to genuine discontent with personal laws, was the driving force behind the Utilisation of Special Marriage Act. Even Hindu law, which aims to provide a universal code of conduct for Hindus, varies on certain essential points concerning family law. The Portuguese Civil Procedure Code of 1939, which is often cited as an example of a UCC, does not, in fact, apply to all communities in GOA. Since its passage, the Dowry Prohibition Act has done little more than sit on the books. Therefore, the goal has been utterly and repeatedly missed in previous attempts at unifying legislation.

Perspectives

The present trends show that getting a UCC has been extremely difficult and that a tremendous amount of work is still required. Here are some recommendations regarding this matter:

- While a uniform law would be ideal, passing it all at once could damage national cohesion and harmony. Progressive legislation should be implemented gradually in a democratic state that is regulated by the rule of law. In stages, the legal process can mitigate the most severe harm caused by a flaw.

The provisions of the different personal laws should be compared in order to identify their similarities and differences. Those ideas can then be used to establish and enforce a personal status law that is instantly applicable. Similar to the business law board that operates under the Ministry of Industrial Affairs, a family law board should be established within the Union law ministry. We need to find out why laws meant to protect families, like the Dowry Prohibition Act, the Hindu Code, and the Dissolution of Muslim Marriage Act, aren't holding up. It would appear that instituting a temporary dual system of family law is the answer to the situation being examined.

Because it is impossible to eliminate all undesirable aspects of religious groups' personal laws at once, it must be carefully positioned. Alternatively, we may draught a UCC that incorporates the most recent and cutting-edge decisions in family law and then submit it to a vote. To the extent that a community's members actively seek its adoption, it will be enforced universally. If not, the community can maintain its own set of personal laws, which can be updated and revised as needed. If this dual system is

ultimately beneficial, the separate laws will eventually be repealed. Therefore, the State must prudently employ its authority and resources if it is to accomplish this mission and bring the notion of Article 44 to fruition.

CONCLUSION

It is reasonable to say that a secular India need a civil code, but there is no pressing need to impose a code on a people that is unwilling to reform. A large portion of society is still unprepared to embrace secular rules that differ from religious norms. Raising literacy rates, shedding light on a variety of social and political concerns, encouraging more civil discourse, and facilitating greater social and religious mobility are all necessary conditions for the effective implementation of the Uniform Civil Code. Justice for all people, national harmony, and equality should be the end goal of any Uniform Civil Code reform effort.

As we roll out the UCC nationwide, we must remember that religious minorities have legitimate concerns that must be met, such as the fear of total marginalisation within Indian culture. Why? Because gaining buy-in and support from all relevant parties and communities is crucial for the successful implementation of a Uniform Civil Law. Concurrently, the UCC should integrate just current laws pertaining to aggressive heads when it is enacted. There will be beneficial outcomes and less fundamentalist resistance if the opinions of Hindus, Muslims, Christians, and Parsis are mobilised in this direction.

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