

Assessing the Feasibility of the Uniform Civil Code in a Diverse and Secular India

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Abstract

India is a nation celebrated for its rich religious diversity and commitment to secularism. Personal laws for religions like Hinduism, Islam, and Christianity currently govern civil matters such as marriage, divorce, and inheritance. However, Article 44 of the Indian Constitution advocates for a Uniform Civil Code (UCC) to establish a uniform legal framework, potentially advancing gender equality and promoting national integration. This research paper explores the feasibility of implementing a UCC in India by examining the benefits of a UCC, including its impact on reducing gender disparities, while addressing concerns over cultural autonomy and religious freedom. The latter half of the paper also provides policy recommendations for implementing the UCC in India.

Keywords: Uniform Civil Code, India, Diversity, Gender Equality

Introduction

Can unity in diversity really exist?

India is well known for its unique religious diversity, which includes religions such as Hinduism, Islam, Christianity, and Buddhism, just to name a few. These religions are governed by their own laws, such as the Muslim Personal Laws, Christian Personal Laws, and Hindu Personal Laws, which deal with matters of marriage, adoption, divorce, etc. The existence of such laws points towards the secularism of India - there is no one state religion, and people are free to practice any religion of their choice.

Enshrined in the Constitution's Directive Principles, Article 44 says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India (Sharma, 2021)." The Uniform Civil Code aims to create a uniform legal framework for civil matters, replacing the personal laws of religions and governing everyone irrespective of religion, caste, sexual orientation, and gender. One of the biggest debates in favour of the implementation of a UCC is the potential it has for reducing gender inequality in the nation. For instance, the *Shayara Bano v. Union of India* (2017) case declared the practice of triple talaq unconstitutional since it was oppressive for women (Mahawar, 2022). Similarly, many such Personal Laws exist that do not grant equality to women. Introducing the Uniform Civil Code will lead to a change in some of the clauses of Personal Laws and ensure gender equality. At the same time, it will lead to greater national integration and harmony.

Despite the implementation of a civil code in Goa, controversies have existed surrounding the broader implementation of the Uniform Civil Code since 1948. Those who oppose the Uniform Civil Code believe it will undermine the religious freedom and diversity of the nation guaranteed by the Indian Constitution. Tribal organisations also express concerns by highlighting the two tribal laws of the Chota Nagpur Tenancy Act and the Santhal Parganas Tenancy Act, which may be affected by UCC (mint, 2023). Thus,

UCC also lacks consensus among communities. While states like Uttarakhand, Assam, and Gujarat have already started working towards implementing UCC, some states like Kerala still stand against it.

In line with the above, this research paper aims to answer the question: *“To what extent is the implementation of the UCC feasible in a diverse and secular nation like India?”*. This paper carefully evaluates the feasibility of the UCC in a diverse country like India by studying the legal background during British rule and assessing the arguments for and against it.

Evolution of Legal Codes in India and Introduction of the Uniform Civil Code

The judicial system in Ancient India has some similarities with today’s judicial system since it was characterised by the existence of a hierarchy of courts whose area of jurisdiction was determined on the basis of the importance of disputes. The primary source of the Hindu law was the Dharmashastra, which contained guidelines relating to social norms and practices and the relationship of people with the state (Britannica, 2010). The British Government then aimed at making a transition from social norms and practices to codified laws. For this, the British Parliament’s Charter Act of 1833 established a Law Commission (Khatter, 2022). The Codification of Indian Law by the British led to the emergence of The Great Codes of Civil Procedure (1859), Indian Penal Code (1860), and Code of Criminal Procedure (1861).

During British rule, the penal law was codified. However, the Britishers hesitated to interfere with the personal laws of the religions. Even then, some laws which were found to be backward underwent some changes. India, as a religiously diverse country, has a vast population which consists of Hindus (79.8%), Muslims (14.2%), Christians (2.3%), Sikhs (1.7%), Buddhists (0.7% and Jains (0.4%) according to the 2011 census (Kramer, 2021). Codified personal laws govern these different religions. Following are the acts under the laws which govern the matters of marriage, divorce, maintenance, adoption, inheritance and guardianship:-

- *Hindu Personal Laws* - Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956, and the Hindu Adoptions and Maintenance Act 1956.
- *Muslim Personal Laws* - Muslim Personal Law (Shariat) Application Act 1937
- *Christian Personal Laws* - Indian Christian Marriage Act 1872 and the Indian Divorce Act 1869
- *Parsi Personal Laws* - Parsi Marriage and Divorce Act 1936 (Satish, 2019).

Some of these laws discriminate against women. It is a matter of fact that the Muslim Law, which is known to be oppressive for women now, was once far more superior to the Hindu Laws in issues of women’s rights during British rule. As compared to the Hindu law, which viewed marriage as an indissoluble contract, the Muslim Law provided women with a right to divorce.

However, over time, roles have been reversed, and Hindu Law is now seen as progressing towards gender equality in terms of religious matters (HERKLOT, 2015). The Christian law, too, is discriminatory since it provides mothers with no rights in the property of the deceased kids.

Opposite the Personal Laws is the Special Marriage Act of 1954, a secular law that provides a legal framework for the marriage of people belonging to different religions. It applies to citizens all over India except in Jammu and Kashmir and is not governed by customs or traditions. Under this Act, polygamy is banned, and protection is provided to religious minorities (Outlook, 2023; Taxmann, 2024).

In order to address the issues of gender equality in personal laws, a Uniform Civil Code has been introduced. The discussions about a UCC date back to 1948 when the drafting committee of India’s constitution suggested it, saying that it would ensure the unity of the country. However, it has faced

opposition from Muslim members and continues to face it even today (Sarkar, 2023). Eventually, it became a part of the Constitution as one of the Directive Principles of State Policy, which means that it is not enforceable in courts but acts as a guiding principle. It refers to having one set of laws governing all citizens instead of having separate personal laws for all religions. The UCC's main aim is to ensure uniformity in the application of the same laws for every citizen instead of conformity to religious beliefs and practices (Debroy and Sinha, 2023). The Supreme Court, in many of its judgments, has called for the implementation of the UCC. This can be seen in the Sarla Mudgal v. Union of India (1995) case, where the Supreme Court suggested a UCC to prevent bigamous marriages where a second marriage takes place without dissolving the first (Taxmann, 2024).

Steps have been taken to implement the UCC by those who are in favour of it. Prime Minister Narendra Modi, on June 27th 2024, took up the topic of the UCC in his speech in poll-bound Madhya Pradesh (The Wire Staff, 2023). Uttarakhand's Chief Minister, on July 8th 2024, said that UCC will be implemented in Uttarakhand once the drafting committee submits its report (FRONTLINE, 2023). However, there are still many challenges to the successful implementation of the UCC. Parties such as Congress, CPI and Samajwadi Party oppose it along with Muslim members and tribal communities who feel that freedom to practice their religion will be restricted (Deccan Herald, 2023b). Considering the various controversies surrounding the UCC, a consensus is required for its peaceful acceptance by multiple communities.

Evaluation of Arguments for and Against the Uniform Civil Code in India

There exists a variety of laws governing citizens according to their religions. However, most of them lack uniformity, which further leads to unfair treatment of women. The UCC aims at ensuring legal uniformity and simplicity. France is one such country where a uniform legal framework governs all its citizens. Initially, every area in France had its own set of laws, increasing the chances of legal conflicts. However, this significantly changed after the implementation of the Napoleonic Code in 1804, which led to the codification of several laws, including commercial and criminal law, and a simplification of administrative divisions (Editors, 2019). Turkey, too, has been able to establish a unified legal framework that replaces Ottoman law and Sharia Courts. In 1926, the Civil Code in Turkey was ratified, giving both men and women equal rights in inheritance, curatorship, divorce, and succession (Karatas, 2021). In India, however, certain rights are not uniformly applicable to all. For instance, under the Hindu Adoption and Maintenance Act (1956), communities like Muslims, Christians, Parsis, and Jews are not allowed to adopt a child legally. Under Muslim law, no uniform age of marriage exists at present. The 2011 Census revealed that 13.5% of Muslim women were married before age 15, and 49% were married between 15 and 19 years of age (Bhavsar, 2020). Establishing a UCC could lead to uniformity in these matters.

Gender equality is another aspect that the UCC aims at addressing. This is highlighted in the Shah Bano Begum v. Mohammad Ahmed Khan (1985) case, where a divorced Muslim woman claimed maintenance from her husband under Section 125 of the Criminal Procedure Code (Taxmann, 2024). She stated that under the Muslim Personal Law, the husband did not have to provide maintenance after the iddat period (three months after the divorce), which was contradictory to the Criminal Procedure Code. Finally, the Supreme Court concluded that the Criminal Procedure Code applied to all citizens and ordered maintenance to be provided by the husband. Thus, the UCC has the benefit of ending such discriminatory laws, which has indeed been successful in Goa. One of the features of the Goa Civil Code (GCC) is that Muslim men whose marriages are registered in Goa cannot practice polygamy (Taxmann, 2024). Discrimination is seen in the Hindu Succession Act as well. Despite changes in 2005, which gave

daughters equal share in the family property, it is still observed that after the death of a Hindu woman, her property is first prioritised for her husband's heirs, her father's heirs, and, in the end, her mother's. The Christian Law, too, makes seeking divorce harder for women than men. These instances of gender disparities undermine and contradict the equality granted by the Constitution. Article 14 of the Constitution of India states, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." and Article 15 states, "The State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them." These Articles point towards equality of men and women in all areas, including religion (Debroy and Sinha, 2023). The UCC thus aims to ensure that these constitutional provisions are upheld, which will secure the secularity of the nation while also ensuring that all citizens are treated equally, irrespective of their sex. While there are proponents of the UCC who claim that it will lead to gender equality, simplification of legal procedures, and national integration, there are also opponents who stand on the view that the Uniform Civil Code would infringe upon their religious autonomy and cultural practices. Many belonging to minority communities stand against the UCC. Asma Zehra, president of the Sharia Committee for Women, argues in defence of the personal laws that will inevitably be affected by the UCC. She says, "The Sharia law provides a framework that promotes equality, education and personal growth for women (Sarkar, 2023)." Muslim groups see the UCC as a tool that would curb their religion and interfere with centuries-old practices like triple talaq, polygamy, and iddat. Tribal communities are also among the minority communities that see the UCC as a threat that will lead to the dilution of their religious laws. For example, Adivasis from Jharkhand expressed their fear of the replacement of the Chota Nagpur Tenancy and the Santhal Parganas Tenancy Acts, which protect their land rights (Deccan Herald, 2023a). Tribals of central and north-eastern India have voiced their concerns against the UCC and believe it would neglect their traditional identities. There are also apprehensions about the UCC leading to communal tensions. Jamiat Ulema-e-Hind, a Muslim organisation, had passed a resolution against the UCC, which said that "No Muslim accepts interference in Islamic law. If any government makes the mistake of implementing UCC, Muslims will not accept this injustice and will be forced to take all measures against it while staying within constitutional limits" (Bandyopadhyay, 2023). Congress leaders, too, are against the UCC and call it a tactic to divert from real issues like inflation. This shows the potential of the UCC to cause tensions and riots.

Personal laws hold a lot of diversity, and implementing the UCC would require drafting, codifying, and participating in various stakeholder activities, such as women's organisations, religious leaders, etc. Such logistical hurdles will make the implementation process complex, time-consuming, and one that will require community consensus. Without a consensus, the implementation of UCC might prove to be an unsuccessful attempt at governing all under the same laws. Experts say that the UCC will impose a Hinduised set of laws on all citizens, which will force upon them Hindu customs and practices (PTI, 2023). Further, the Law Commission's 2018 report said the UCC is "neither necessary nor desirable at this stage". Critics' opinion is that the UCC is against Articles 25-28 of the Constitution, which grants the right to freedom of religion (Balakrishna, 2022).

Thus, while proponents argue that India, as a secular country, should treat everyone equally irrespective of their religion, opponents hold that secularism means that everyone should be allowed to practice their own religion.

Policy Recommendations for Implementing the Uniform Civil Code in India

The UCC has been a topic of debate in India, with various concerns raised by different stakeholders, like the religious communities. Minority communities such as tribals see the UCC as potentially wiping out their religious practices, while Muslims fear that the UCC will force Hindu customs on them. With all the backlash on the discussions about the UCC, it is safe to assume that there might be increased social unrest when it is actually implemented. Along with gaining community consensus, concerns regarding the logistical complexities in codifying and implementing a uniform civil code also rise.

The implementation of UCC must be accompanied by a robust public awareness campaign (Gupta, 2023). Awareness campaigns and educational programs to educate communities about the benefits of the UCC can help address concerns and gain support. China's One Child Policy, implemented in 1979, restricted individual family choices and forced abortions and sterilisations, thus taking away people's freedom (Fong, 2019). It was seen as a Human Rights violation and led to many riots across the country. Many critics believe that the UCC too will take away religious freedom. Thus, creating a consensus beforehand by creating awareness can help avoid such riots and ensure acceptance by all. Consultation with stakeholders, like representatives of religions, legal experts and women's rights organisations, could also be held to ensure that the UCC is fair and just to everyone (Kaur, 2024).

The judiciary plays a massive role in implementing the UCC. Through its various judgements in cases, particularly those of protecting women's rights, the courts have advocated for the need of the UCC, which helps shape public opinion. The diverse personal laws will have to be codified into one uniform civil code, which involves several legal complexities. Education and training programs for judges in these matters will ensure a better understanding of the personal laws and the complex features of the UCC. This will, in turn, lead to fair and equal implementation. Monitoring the UCC once implemented will also require the judiciary to be aware and educated, enabling them to make necessary adjustments and smoothen the implementation process. After all, the judgements and interpretations of the judiciary serve as a guiding principle for legislative action (Kaur, 2024).

Several critics have harboured misconceptions about the UCC, such as - it will adversely affect cultural diversity, it will no longer ensure secularism of the country, or it will ignore minority communities (Gupta and Soni, 2023). Eliminating such misconceptions requires sensitisation programs, which will highlight the benefits of the UCC, stating that it will rectify the existing gender inequalities and eliminate specific laws of religions that do not guarantee equality. It will make people aware of how the UCC aligns with India's Constitutional principles, which ensure equality of all, irrespective of religion.

Implementing the UCC requires a strong political will. Political parties often use trending topics to gain political advantage, which shapes public opinion, starting with the party's supporters (Gupta, 2023). Governments must ensure that political parties are not biased towards any particular religious community and should not use the UCC as a political tool to gain popularity.

Conclusion

India, a religiously diverse country, has various personal laws governing their respective religions. The Uniform Civil Code aims to replace these personal laws in order to bring all citizens under one law. In several cases, the court's judgments have pointed towards the need for the UCC to ensure gender equality, which is considered one of its significant benefits along with national integration. Overall, the Uniform Civil Code has arguments for and against it which this paper aimed to analyse to find out to what extent its implementation is feasible in India.

Britishers in India codified laws long ago. The judicial system at that time shared one similarity with the judicial system today: the hierarchy of courts. Discrimination against women was visible in personal laws such as Hindu and Muslim Personal Laws and continues to be discriminatory even today. The Uniform Civil Code is believed to lead to a change in such laws and provide gender justice.

The implementation of the Uniform Civil Code in India is feasible to some extent since countries such as France and Turkey have successfully implemented one of their own. The same has been done in Goa too. In India, implementing the UCC will uphold Articles 14 and 15, which point towards equality of both men and women in matters of religion. It will also be able to replace discriminatory personal laws for women and promote gender justice in matters of inheritance, divorce, etc. However, this feasibility is limited considering the opposition that the UCC currently faces, mainly from Muslim communities as well as minority communities like the tribals who fear that the UCC will neglect their religion and curb their religious freedom. At the same time, the codification of personal laws and bringing them all under one hold many logistical challenges.

Thus, the UCC's implementation has several requirements, including creating awareness to clarify the myths about UCC and extensive training of the judges. Only if these requirements are met can the feasibility of implementing the UCC be increased to some extent, and the desired outcomes can then be achieved.

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