



UNIFORM CIVIL CODE: ENFORCEMENT CHALLENGES

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ABSTRACT: This paper explores the concept of a uniform civil code, its origins, and its relevance in addressing gender inequality in Hindu and Muslim personal law. It emphasizes its potential to empower women and reduce discrimination, hatred, and partition. The paper also explores the correlation between the code and secularism, and its potential to reduce dirty politics during elections. The objective of this paper is to analyze the advantages and disadvantages bracketed with implementing such code on women and marginalized populations.

Additionally, the paper offers suggestions and recommendations that may open doors for meaningful dialogue, ease the process of reaching consensus, and develop the basis for carrying out a UCC in accordance with secular democratic values in India.

INTRODUCTION: HISTORY AND ORIGIN

The 1835 report commissioned by the British government in colonial India advocated for the standardized codification of Indian legal principles, encompassing criminal law, evidence, and contractual agreements.

Nevertheless, the recommendations put forth in the Lex Loci Report of October 1840 proposed the exclusion of personal laws about Hindus and Muslims from this codification process. Subsequently, as the British administration advanced its governance, establishing the B N Rau Committee in 1941 aimed at systematizing Hindu legal practices, culminating in the promulgation of the Hindu Succession Act in 1956.

Throughout the discussions held within the Constituent Assembly, there was a notable emphasis on the introduction of the Uniform Civil Code, leading to extensive deliberations. A vote was conducted, resulting in a 5:4 majority decision made by the sub-committee focusing on fundamental rights, under the leadership of Sardar Vallabhbhai Patel, which concluded that the Uniform Civil Code should not be designated as a fundamental right.¹

K.M. Munshi argued that consolidating and unifying personal law would lead to a unified and secular way of life, divorce religion from personal law, social relations, and inheritance rights. He also backed the UCC for the empowerment of women, as the right to equality was already recognized as a coveted right. A common civil law governing personal matters would bring all women under one umbrella, eliminating discriminatory practices regardless of race or religion.

Dr. B R Ambedkar, in the process of formulating the Constitution, expressed the view that a Uniform Civil Code was indeed beneficial but suggested that its implementation should be voluntary until the nation had reached a level of social preparedness to embrace it. Consequently, the Uniform Civil Code was positioned within the Directive Principles of State Policy (DPSP) (Article 44).

¹ Drishti IAS "Need of UCC in India" June 29,2 2023.

The Constituent Assembly of India did have debates on the issue of a Uniform Civil Code (UCC) during the framing of the Indian Constitution. The idea of a UCC was originally encapsulated in Article 35 of the Draft Constitution, which later became Article 44 of the Constitution of India. The debates in the Constituent Assembly reflected differing opinions on the implementation of a UCC, with some members advocating for a common set of laws to promote unity and equality among citizens, while others expressed concerns about the potential impact on religious and cultural diversity.

Some members argued that a UCC was necessary to ensure gender equality and social justice, while others raised objections based on the diversity of religious practices in India. The debates highlighted the complexities and sensitivities surrounding the issue of personal laws and the challenges of balancing uniformity with respect for religious and cultural differences. Ultimately, Article 44 of the Indian Constitution, which calls for a UCC, was included as a directive principle of state policy, leaving the implementation of such a code to the discretion of the government based on societal acceptance and readiness.

WHAT DO YOU UNDERSTAND BY UNIFORM CIVIL CODE?

A Uniform Civil Code (UCC) is a proposal to create a single set of laws applicable to all citizens of a country, regardless of their religion, ethnicity, or other social distinctions. The aim of a UCC is to provide uniformity in personal laws related to matters such as marriage, divorce, inheritance, and adoption, which are currently governed by diverse religious laws in India. The implementation of a UCC is often seen as a way to promote gender equality, secularism, and social justice by ensuring equal rights and treatment for all citizens under a common set of laws.

The purpose behind a Uniform Civil Code (UCC) is to promote social cohesion, gender equality, and secularism by unifying personal laws governing matters such as marriage, divorce, inheritance, and adoption. The implementation of a UCC seeks to ensure equal rights and treatment for all citizens, irrespective of their religion, ethnicity, or other social distinctions. By establishing a common set of laws applicable to all individuals, the UCC aims to eliminate discriminatory practices, promote unity among diverse communities, and uphold principles of justice and equality in society.

INDIAN JUDICIARY ON UNIFORM CIVIL CODE

One significant case related to the Uniform Civil Code (UCC) in India is the Shah Bano case. In the landmark judgment of *Mohd. Ahmed Khan v. Shah Bano*, the Supreme Court of India ruled that a divorced Muslim woman was entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973, even after the completion of her iddat period. This case brought the issue of UCC to the forefront and highlighted the need for gender equality and social justice in matters of personal laws. The judgment sparked a national debate on the implementation of a UCC to ensure equal rights for women across all religious communities.

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In the case of *Bai Tahira v. Ali Hussain Fissalli Chowthia*³, Justice V. R. Krishna Iyer expressed a viewpoint on the Uniform Civil Code (UCC) that emphasized the incorporation of the best provisions from every system of

² SCC 556 = AIR 1985 SC 945

³ AIR 1979 SUPREME COURT 362.

personal laws. He highlighted the importance of selecting progressive and humanitarian aspects from various legal systems, including Muslim law, to enrich India's common civil code.

Justice Krishna Iyer emphasized the need to interpret laws in a modern and liberal context that promotes gender equality, modernizes marriage practices, widens divorce rights, and enhances inheritance laws. He argued that cultural autonomy should not be a barrier to national unity, but at the same time, human rights should not be compromised in the name of religious practices. This perspective underscores the idea that a UCC should aim to combine the most beneficial elements from different personal laws to create a more just and equitable legal framework for all citizens.

In the case of *State of Bombay v. Narasu Appa Mali*⁴, the Bombay High Court held that personal laws, including those related to marriage and succession, were not subject to fundamental rights under the Indian Constitution. The court ruled that personal laws were outside the purview of Article 13 of the Constitution, which deals with laws inconsistent with or in derogation of fundamental rights.

This judgment implied that personal laws, which are based on religious customs and practices, were exempt from constitutional scrutiny and could not be challenged on the grounds of fundamental rights violations. The decision in this case had implications for the debate on the Uniform Civil Code (UCC) in India, as it reinforced the autonomy of religious communities in matters of personal laws.

The *Narasu Appa Mali case* underscored the need for a comprehensive review of personal laws and the potential challenges in implementing a UCC that would harmonize diverse legal systems while respecting religious and cultural sensitivities.

UNIFORM CIVIL CODE IN GOA⁵

Goa currently stands as the sole state within India that enforces a uniform civil code known as the Goa Civil Code or the Goa Family Law. It was introduced in 1867 during the Portuguese colonial era and continues to be in force even after Goa's integration into the Indian Union in 1961. The Goa Civil Code applies to all residents of Goa, regardless of their religious affiliations. It governs personal matters such as marriage, divorce, adoption, and succession. It provides a common legal framework for personal matters, irrespective of religious beliefs, in contrast to the personal laws that apply to other parts of India, where different religious communities are governed by their respective personal laws.

UTTARAKHAND UNIFORM CIVIL CODE BILL, 2024⁶

Uttarakhand Uniform Civil Code (UCC) bill is the alignment of succession laws with the Indian Succession Act, 1925. This includes provisions for testamentary and intestate succession, where there are no restrictions on property bequeath through a will, and priority is given to Class-1 heirs like children and widows in intestate succession. Additionally, the Uttarakhand UCC bans practices like polygamy, Nikah Halala, and Iddat, aiming to promote gender equality and justice.

1. Muslim Community:

The minimum age of marriage under the Uttarakhand UCC is set at 18 for women and 21 for men, aligning it with the provisions of the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

In terms of succession laws, the Uttarakhand UCC harmonizes testamentary and intestate succession with the Indian Succession Act, 1925. In testamentary succession, there are no restrictions on property bequeathal through a will. For intestate succession, priority is given to Class-1 heirs such as children and widows. If Class-1 heirs are absent, Class-2 heirs like siblings inherit, followed by the closest relative.

⁴ AIR 1952 BOMBAY 84.

⁵ Vaji Ram and Ravi, "Uniform Civil Code", Feb 05, 2024.

⁶ Insights IAS, "Uttarakhand: Uniform Civil Code (UCC) 2024 Bill" Feb 08, 2024.

The Uttarakhand UCC prohibits practices like polygamy, Nikah Halala, and Iddat, aiming to modernize and reform outdated practices in alignment with human rights and constitutional values.

2. Hindu Community:

Both parents, the mother and father, have been elevated as Class I heirs in intestate succession under the new law. Previously, only the mother was included in this category. For instance, if a person named A passes away without a will (intestate), according to the previous Hindu law, the property would primarily go to their mother, if alive, and then to other relatives like the spouse or children. However, the father was not considered a primary heir. With the recent legal changes, both parents are now recognized as equally significant heirs in such situations.

3. Live-in relationship:

Section 378 of the Code asserts that all live-in relationships are required to be registered with the designated authority, ensuring that children born from these unions are entitled to legal rights. In cases where either partner is under 21 years old, their parents will be notified, and the registration details will be forwarded to the local police. Children born from such relationships will be granted legal rights. Additionally, individuals who are already married are prohibited from entering into live-in relationships.

4. Registration of Marriage:

Marriage registration is compulsory within 60 days of the wedding ceremony. Providing incorrect information during registration may result in a three-month jail sentence and a fine of ₹25,000. Failure to register the marriage could lead to a fine of ₹10,000.

5. Divorce:

Divorce can only be obtained through court proceedings, and failure to adhere to this requirement may lead to a maximum penalty of three years of imprisonment.

6. Exemption for ST:

The bill does not apply to Scheduled Tribes (STs) in Uttarakhand. This exception addresses the concerns raised by the tribal community, constituting around 3% of the state's population, regarding their special status.

IMPACT OF UNIFORM CIVIL CODE

The implementation of a Uniform Civil Code (UCC) in Indian society would have several potential effects:

- Equality and Uniformity:** A UCC would ensure that all citizens, regardless of their religion, follow the same set of laws in matters such as marriage, divorce, inheritance, and adoption. This would promote equality before the law and eliminate discriminatory practices based on religious personal laws.
- Gender Justice:** One of the primary arguments in favor of a UCC is that it would help in achieving gender justice by ensuring equal rights for men and women in personal matters. It could potentially address issues of gender discrimination present in certain personal laws.
- Social Cohesion:** A UCC could contribute to social cohesion by fostering a sense of unity and common identity among diverse religious communities. It could promote national integration and reduce communal tensions arising from differences in personal laws.
- Legal Clarity and Simplification:** Having a uniform set of laws applicable to all citizens would simplify legal procedures and reduce confusion arising from the coexistence of multiple personal laws. It could lead to greater legal clarity and efficiency in resolving disputes.
- Challenges and Resistance:** Implementing a UCC may face challenges due to resistance from religious groups and concerns about preserving cultural and religious identities. Balancing the need for uniformity with respect for diversity and autonomy of religious communities would be a significant challenge.
- Progressive Social Change:** A UCC could facilitate progressive social change by modernizing laws and aligning them with contemporary principles of justice, equality, and human rights. It could help in addressing outdated practices and customs prevalent in certain personal laws.
- Legal Protection:** Women could benefit from a UCC that provides clear and uniform legal provisions to protect their rights and interests. It could simplify legal procedures and ensure that women have access to justice on an equal footing with men.

NEGATIVE IMPACT OF UCC ON WOMEN

While the implementation of a Uniform Civil Code (UCC) in India is often seen as a step towards gender equality and social justice, there are also concerns about potential negative impacts on women:

1. Loss of Cultural Identity: Some critics argue that a UCC could lead to the erosion of cultural and religious identities, particularly for women from minority communities who may have strong ties to their personal laws and traditions. This could result in a loss of autonomy and agency for women in matters of personal and family law.
2. Backlash from Conservative Elements: The introduction of a UCC that challenges traditional gender roles and practices may face resistance from conservative elements within society. This resistance could manifest in various forms, including social stigma, discrimination, and even violence against women who seek to assert their rights under the new legal framework.
3. Lack of Adequate Safeguards: Concerns have been raised about the lack of adequate safeguards and support mechanisms for women in the transition to a UCC. Women, especially those from marginalized communities, may face challenges in accessing legal resources, understanding their rights, and navigating the complexities of a uniform legal system.
4. Impact on Vulnerable Groups: Women belonging to vulnerable and marginalized groups, such as low-income women, rural women, and women with limited education, may be disproportionately affected by the implementation of a UCC. They may face barriers in asserting their rights and accessing justice under a uniform legal framework.
5. Enforcement Challenges: Ensuring effective enforcement of gender-equal provisions under a UCC may pose challenges, particularly in regions where legal infrastructure is weak, and social norms are deeply entrenched. Women may struggle to exercise their rights in practice due to lack of awareness, resources, and support.
6. Unintended Consequences: The unintended consequences of a UCC, such as unintended loopholes, ambiguities, or discriminatory interpretations, could negatively impact women's rights and interests. It is essential to carefully consider and address these potential risks during the drafting and implementation of a uniform legal code.

CONCLUSION

The Uniform Civil Code (UCC) in India is a contentious issue that elicits diverse opinions from various stakeholders. Proponents of the UCC argue that it can be a tool for promoting gender equality and social justice by standardizing laws across different religious and cultural groups. This uniform legal framework is seen as a way to ensure equal rights and treatment for all citizens, irrespective of their backgrounds.

However, critics raise valid concerns about the potential drawbacks of implementing a UCC. They fear that a uniform code could lead to the dilution of cultural identities, resistance from conservative factions who may oppose changes to traditional practices, inadequate safeguards for vulnerable groups, disproportionate impacts on marginalized communities, challenges in enforcement, and unintended consequences that could harm women's rights and well-being. The customs and practices found in personal laws of various religious faiths often result in prejudicial treatment towards women's rights in domains like marriage, divorce, inheritance, and property rights.

These concerns underscore the necessity of thoroughly evaluating the impact of a UCC on women, especially those from disadvantaged communities, and ensuring that the implementation process incorporates robust safeguards and support systems to safeguard and protect the rights of women and marginalized populations.

In conclusion, while the concept of a UCC holds promise in advancing gender equality and social cohesion, it is essential to carefully consider and mitigate the potential negative consequences on women and marginalized communities. By ensuring that the implementation of a UCC upholds principles of justice, equality, and inclusivity for all members of Indian society, the goal of promoting a fair and equitable legal system can be achieved.