



Uniform Civil Code Under The Constitution Of India A Socio Legal Perspective

By: Akansha Singh, LLM from Chaman Lal Law College

Abstract

Part IV of the Indian Constitution encompasses the Directive Principles of State Policy, which, although non-enforceable, play an indispensable role in governing the nation. Among these principles, Article 44 specifically places an obligation on the state to establish a Uniform Civil Code (UCC). Despite the Supreme Court issuing various directives for its implementation, excessive politicization has prevented the realization of this objective, keeping it a distant aspiration. Currently, personal matters like marriage, divorce, and adoptions are governed by diverse personal laws that vary across religious communities. These laws derive their legitimacy from religious texts and customs, often resulting in discriminatory practices against certain genders. The objective of the paper is to strike a balance between the Right to Freedom of Religion and the Right to Equality by distinguishing between "essential religious practices" and "secular activities." It is crucial to gradually and systematically enact a Uniform Civil Code, while simultaneously raising awareness among the populace, particularly minority communities, about its scope and implications.

Keywords: essential religious practices, personal laws, Right to Freedom of Religion, Right to Equality, secular activities, Uniform Civil Code etc.

Introduction

"Injustice anywhere is a threat to justice everywhere." - Martin Luther King

On November 26, 1949, the people of India bestowed upon themselves a constitution, establishing India as a Sovereign, Socialist, Secular, Democratic, and Republic nation. This constitution guarantees Justice, Liberty, Equality, and Fraternity to all its citizens. The Constitution of India provides Fundamental Rights under Part III, along with a mechanism to enforce them. Additionally, Part IV of the constitution outlines the Directive Principles of State Policy, which, although non-enforceable, are fundamental in governing the country. It is the state's responsibility to incorporate these principles into legislation. One such directive principle, Article 44, places an obligation on the state to enact a Uniform Civil Code (UCC) that would govern personal matters uniformly across the country, irrespective of religion.

Understanding the Uniform Civil Code

A Uniform Civil Code, similar to the Uniform Criminal Code, is designed to apply uniformly to all communities, regardless of religion, race, caste, or creed. It pertains to various aspects of personal relations, such as contracts, property, marriage, and inheritance. Existing civil laws, such as the Indian Contract Act, Transfer of Property Act, and Code of Civil Procedure, are already applied uniformly throughout the country. However, personal laws governing marriage, divorce, succession, adoptions, and maintenance differ among different religious communities. These laws, often referred to as 'Personal Law,' govern an individual's family matters, regardless of their geographical location.

Historical Context and Challenges

The Lex Loci Report of October 1840 highlighted the importance of uniformity in codifying Indian laws pertaining to crimes, evidence, and contracts. However, it recommended keeping personal laws of Hindus and Muslims outside the scope of such codification. While some of these laws, particularly Hindu laws, have been codified, others continue to exist as uncoded personal laws applicable to specific religious communities.

Article 44 and the Unrealized Potential

Article 44 of the Constitution of India imposes a positive duty on the state to enact a UCC that applies uniformly throughout the country, irrespective of religion, race, caste, or creed. However, even after 66 years of its enactment, the UCC remains largely unimplemented. Excessive politicization has hindered its progress, turning it into a distant dream. In the absence of a uniform law governing personal matters, various religious communities continue to follow their own customs and texts, often resulting in gender discriminatory practices.

Achieving a Balance

To strike a balance between the Right to Freedom of Religion and the Right to Equality, it is crucial to segregate essential religious practices from secular activities. This differentiation would ensure that individuals are free to practice their religion while simultaneously promoting equality and justice for all. The introduction of a UCC is essential in achieving this delicate equilibrium.

The Way Forward

The need of the hour is to gradually introduce a Uniform Civil Code, making sure to raise awareness among all segments of society, particularly minority groups. This cautious approach would help address concerns and misconceptions while ensuring that the UCC's scope and extent are well-understood. Open dialogue and education can pave the way for a more inclusive and equitable society.

The implementation of a Uniform Civil Code in India remains a significant challenge due to excessive politicization and the presence of personal laws specific to different religious communities. Nonetheless, Article 44 of the Constitution emphasizes the state's obligation to enact a UCC for the betterment of society. By gradually introducing a UCC and fostering awareness among all citizens, we can strive towards a just and equal society that respects both religious freedom and individual rights. It is only through such efforts that India can fulfill

Methodology

This paper explores the constitutionality of implementing a Uniform Civil Code (UCC) in India, examining the intentions of the founding fathers of the Constitution and tracing the judicial developments that have arisen due to judicial activism. The author poses crucial questions and provides explanations while seeking a balance between the Right to Equality and the Right to Freedom of Religion. Finally, the paper presents a potential solution to the issue at hand.

Constituent Assembly Debates.

During the deliberations of the Sub-Committee on Fundamental Rights, the UCC was included as one of the Directive Principles of State Policy. Article 35 of the draft Constitution stated, "The State shall endeavor to secure for citizens a Uniform Civil Code throughout the territory of India." However, it was suggested that the implementation of the UCC should be entirely voluntary.

Muslim representatives strongly opposed the motion, arguing that any interference in Muslim Personal Laws would infringe upon their Fundamental Rights. Several amendments to Article 35 were proposed by Mohammed Ismail Sahib, Naziruddin Ahmed, Mahmood Ali Baig Sahib Bahadur, and B. Pocker Sahib Bahadur, seeking the insertion of a proviso stating that "nothing in this Article shall affect the personal law of the citizen." They emphasized that no community should be obligated to abandon its own personal law, which should only be changed with their prior approval.

In response, Alladi Krishnaswami Ayyar convincingly refuted their arguments by highlighting the broad scope of a civil code, which encompasses various aspects of civil relations, contracts, property, and similar matters. He questioned the objection to a general statement advocating the state's efforts to establish a uniform civil code throughout India. K.M. Munshi



drew attention to the Hindu Law Draft under consideration in the legislative assembly, acknowledging that some provisions contradicted the injunctions of Manu and Yagnyavalkya. However, he emphasized the importance of unifying and consolidating the nation without interfering with religious practices.

Dr. Ambedkar's Stance

Dr. B.R. Ambedkar, the principal architect of the Indian Constitution, refused to accept the proposed amendments to Article 35. He strongly advocated for a UCC and argued that while India had a uniform and comprehensive Criminal Code applicable nationwide through the Penal Code and the Criminal Procedure Code, the realm of Marriage and Succession remained untouched. He highlighted the need to address this aspect and extend the principles of a uniform civil code to ensure equal treatment.

The debates in the Constituent Assembly shed light on the discussions surrounding the implementation of a Uniform Civil Code in India. The objections raised by some representatives were met with counterarguments emphasizing the necessity of unifying civil laws. Dr. Ambedkar's strong support for a UCC reflected his belief in promoting equality and overcoming the existing disparities in personal laws.

The constitutionality of a UCC in India must be analyzed in light of these historical deliberations and the evolving judicial landscape. Balancing the principles of equality and religious freedom is essential in formulating a comprehensive solution that respects individual rights while fostering a harmonious society.

Judicial Developments

This article explores the evolution of judicial perspectives on the implementation of a Uniform Civil Code (UCC) in India. It highlights key court cases and their impact on the discourse surrounding the need for a uniform civil law. The judiciary's stance on addressing gender discriminatory practices disguised as religious practices is also examined.

Court Cases and Judicial Activism

In 1985, in the landmark case of Mohammad Ahmed Khan v. Shah Bano Begum, the Supreme Court directed the Parliament to enact a UCC. The court expressed regret over the non-implementation of Article 44 of the Constitution, emphasizing that a UCC would promote national integration by eliminating conflicting ideologies arising from disparate laws. A similar sentiment was reiterated in Jorden Diengdeh v. S.S. Chopra, where the court called for legislative intervention to establish a uniform code for marriage and divorce.

The case of Sarla Mudgal v. Union of India further emphasized the need for a UCC. The court held that implementing a UCC would not infringe upon the fundamental rights relating to religion of any community's members. However, a subsequent shift in the judicial trend occurred in Pannalal Bansilal v. State of Andhra Pradesh. The court acknowledged the desirability of a uniform law but suggested that a gradual implementation process would be more conducive to maintaining unity and integrity in a democratic country like India.

Chief Justice V.N. Khare reiterated the significance of a UCC in promoting national integration by removing contradictions based on ideologies in the case of *John Vallamattom v. Union of India* in 2003. This highlighted the continued importance of a UCC in the judicial discourse.

Addressing Gender Discrimination

In recent years, the judiciary has actively addressed gender discriminatory practices disguised as religious practices. For example, in *Yunusbhai Usmanbhai Shaikh v. State of Gujarat*, the Gujarat High Court condemned Muslim polygamy as "heinously patriarchal" and ordered its cessation. Similarly, in *Prakash v. Phulavati*, the Supreme Court examined practices such as polygamy and triple talaq in Muslim Personal Law, deeming them "injurious to public morals."

The Court's Call for Implementation

The Supreme Court's latest reminder for the implementation of a UCC came on October 12, 2015. The court expressed concern over the confusion caused by personal laws governing different religious practices and asked the government if it was willing to implement a Uniform Civil Code in the country.

The judiciary's evolving stance on the UCC in India reflects the recognition of the need for national integration, gender equality, and the elimination of conflicting ideologies arising from disparate personal laws. While the judiciary has played a vital role through judicial activism, the implementation of a UCC remains a complex and ongoing process. The judiciary's emphasis on a gradual and consultative approach underscores the importance of balancing the diverse cultural and religious sensitivities while striving for a comprehensive legislation that promotes equality and unity.

Observations

Arguments & Counter-arguments

Balancing Freedom of Religion and the Enactment of a Uniform Civil Code

One of the arguments presented by minorities against implementing a Uniform Civil Code (UCC) is that it violates their Fundamental Right to Freedom of Religion. They argue that following personal laws is their right to profess, practice, and propagate their religion. However, a valid question arises regarding practices like triple talaq, which are considered religious activities despite lacking sanction in religious texts. Even in Muslim Law, talaq-al-bidat is deemed an impure form of divorce, and its validity is not recognized by all sects. Many Muslim-majority countries have reformed their Muslim Personal Laws, eliminating gender discriminatory practices like polygyny and triple talaq. It raises the question of why Indian Muslims still live under laws enacted in the 1930s. Similarly, the argument that minorities are not ready for the implementation of a UCC holds little weight. If willingness were a prerequisite, laws addressing issues such as sati, child labor, forced labor, widow remarriage, and female infanticide would never have been enacted.

In countries like the USA, Australia, UK, and parts of Europe, various minorities, including Muslims, have accepted civil laws applicable uniformly to all citizens. So why do minorities in India feel insecure? The answer lies in the politicization of the UCC issue by political parties and the lack of political courage to bring about change. There is a fear of losing minority votes, particularly from the Muslim community. Consequently, Article 44 remains a non-binding provision even after 66 years of enactment.

Another argument against the UCC is that personal laws should not be subjected to Part III of the Constitution, as the term "law" in Article 13(4) does not include personal laws. While some have compared the introduction of constitutional law in personal laws to "introducing a bull in a china shop," this view has been criticized by several jurists. Personal laws, enforced daily by courts, should be considered "law," especially since "custom" is included in Article 13 to protect fundamental rights. It is true that judges cannot order or direct the legislature to make laws. The question of a UCC is a matter of policy and falls under the jurisdiction of the legislature, not the courts. However, the intention of the Constitution's founding fathers should not be forgotten. Article 44 is a mandatory provision binding the government, and it is the government's responsibility to give effect to this provision. The Constitution applies to the entire country, and every section and community must accept its provisions and directives.

Concerning the possibility of reconciling personal laws of various communities and enacting a uniform code, it may not be possible to reconcile religious customs and practices, but it is feasible to harmonize the secular aspects of religions. Personal laws primarily relate to secular activities, which fall within the regulatory power of the state. A UCC, if enacted, would deal only with the secular aspects of religion, similar to the Uniform

Civil Code in Goa. Matters such as maintenance should not differ based on religious affiliation since they fall outside the scope of "essential religious practices" and come under the purview of secular practices.

The biggest hurdle to UCC implementation is the fear of losing religious identity among minorities. However, there should be no apprehension of losing identity when the Constitution guarantees the Right to Freedom of Religion and Cultural and Educational Rights in Part III. The Constitution guarantees freedom of religion, conscience, and the right to profess, practice, and propagate religion for all individuals in India. It also ensures minority rights to conserve their language, script, culture, and the establishment and administration of educational institutions. International covenants, such as the International Covenant on Civil and Political Rights (ICCPR), further protect the rights of ethnic

Striking a Balance between Equality and Freedom of Religion

The Fundamental Rights enshrined in the Indian Constitution are not absolute, and this includes the Right to Freedom of Religion stated in Article 25(1). Article 25(1) guarantees freedom of religion, conscience, and the right to profess, practice, and propagate religion for all individuals in India. However, this right is subject to other provisions in the Constitution, including the Right to Equality under Articles 14 and 15. While the freedom of religion encompasses the right to be governed by personal laws, it does not grant the right to perpetuate the denial of equality or personal liberty for those governed by such laws. As a result, personal laws are not exempt from legislative intervention.

During the drafting of the Constitution, the framers aimed to distinguish between the core essence of a religion and secular activities that may be associated with religious practices but are not integral to the religion itself. They recognized that if a religious practice includes a secular activity or falls within the realm of social reform or welfare, Parliament has the authority to enact laws regarding such practices. To address this, Clause 2(a) was inserted, stating that existing laws or laws regulating or restricting secular activities associated with religious practices would not be affected.

In a recent case, *Nikhil Soni v. Union of India*, the distinction between essential religious practices and secular practices was elaborated upon. The court clarified that while a practice may be religious, it may not be an essential and integral part of the religion. Article 25(1) protects only those religious practices that are essential and integral to the religion, while practices falling outside of

this scope are considered secular activities and can be regulated by the legislature. Consequently, practices such as witchcraft, superstition, ordeals, sati, child marriage, prohibitions against widow remarriage, caste discrimination, triple talaq, and polygamy may be prohibited or regulated.

Therefore, once it is established that there are customs and practices that are not integral to the essence of religion but are secular activities connected with religion, the legislature has the competence to enact a uniform law concerning such secular activities in accordance with Article 44.

In conclusion, there is a lack of awareness regarding the Uniform Civil Code, particularly among minority communities. It is crucial to educate people about the actual meaning and scope of the code. A commission should be established to determine the code's extent and contents. The Parliament should then enact a draft code, distinguishing between essential religious practices and secular practices related to religion. State regulation should focus on financial matters and secular aspects like maintenance or inheritance, while religious or customary practices such as saptapathi or nikah should not be interfered with. Provisions regarding the validity of marriage should address factors like age and registration. It is essential to reassure people, especially minorities, that their right to religion will not be encroached upon. The draft code should be made available for public opinion, and nationwide campaigns and discussions should be held. After considering the commission's viewpoint, the Parliament should pass a code applicable to the entire country, irrespective of religion, race, caste, or creed.

The primary objective should be to realize the intentions of the Constitution's founding fathers, as embodied in the Preamble. The values and principles of social justice, liberty of belief, faith, and worship, equality of status, and unity and integrity of the nation should not be forgotten. Striking a balance between the Right to Freedom of Religion and the Right to Equality is crucial. The code should aim for unity amidst diversity. In a country governed by the Rule of Law like India, personal laws cannot take precedence over the Constitution. Discriminatory practices like triple talaq, disguised as religious practices and customs, must be tested against Articles 14 and

References

The Constitution of India.

2. Henry Campbell Black, 'Black's Law Dictionary' (6th edn, West Publishing Co., 1995 56Seth (n 30).
3. Abul Bashar Mohammad Abu and Noman Saeed Ahsan Khalid, 'Uniform Family Code: An Appraisal of Viability in Pluralistic Bangladeshi Society' (2011) 16 The Chittagong

University Journal of Law

<[http://www.culaw.ac.bd/files/jurnal-2011/Vol.%20XVI,%202011%20\(p.81-109\).pdf](http://www.culaw.ac.bd/files/jurnal-2011/Vol.%20XVI,%202011%20(p.81-109).pdf)>

4. Constituent Assembly Debates Official Report, Book No. 2, Vol. No. VII, '4 November 1948 to 8 November 1949', Lok Sabha Secretariat, New Delhi, 5th Reprint 2009.

5. B. Shiva Rao, The Framing of India's Constitution vol 2 (1st edn, Universal Law Publishing Co. Pvt. Ltd. 2012) 206

6. Saeed Khan, 'Stop Muslim Polygamy, its 'heinously patriarchal' says Gujarat High Court, pitching for a Uniform Civil Code' The Economic Times (Ahmedabad, 6 November 2015)

<<http://economictimes.indiatimes.com/news/polit>

[ics-and-nation/stop-muslim-polygamy-its-heinously-patriarchal-says-gujarat-hc-pitching-for-a-common-civil-code/articleshow/49683665.cms](http://economictimes.indiatimes.com/news/polit)>

7. BhadraSinha, 'SC to examine Muslim personal law, aim to end gender bias' The Hindustan Times (New Delhi 28 October 2015) <<http://www.hindustantimes.com/india/sc-to-examine-muslim-personal-law-for-polygamy-triple-talaq/story-qpLYAycFxuLkHyvv8zCRTL.html>>

8. UtkarshAnand, 'Uniform Civil Code: There's total confusion, why can't it be done, SC asks govt' The Indian Express (New Delhi, 13October 2015)<<http://indianexpress.com/article/india/india-news-india/uniform-civil-code-supreme-court-asks-govt-why-cant-it-be-done-tell-us-your-plan/>>

9. M. Hidayatullah, Mulla Principles of Mahomedan Law (19th edn, Lexis Nexis 2011) 261

10. Durga Das Basu, Commentary on the Constitution of India vol 3 (8th edn, Lexis Nexis 2008) 4132

11. Law Commission, Property Rights of Women: Proposed Reforms under the Hindu Law (Law Com No 174, 2000) <<http://www.lawcommissionofindia.nic.in/kerala.htm>>

12. Leila Seth, 'A Uniform Civil Code: towards gender justice' (2005) 31 India International Centre Quarterly 40

13. Raya Hazarik, 'Should India have a Uniform Civil Code?' (25 October 2010) <<http://ssrn.com/abstract=1697580>>

Rajeev Dhavan, 'Codifying personal laws' The Hindu (1 August 2003)<<http://www.thehindu.com/thehindu/2003/08/01/stories/2003080100521000.htm>>

15. Prof. MP Jain, Indian Constitutional Law (6th edn, Lexis Nexis 2010) 1510

16. International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966

<<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>>

17. S. P. Sathe, 'Uniform Civil Code: Implications of Supreme Court Intervention' (1995) 30 Economic and Political Weekly 2165

18. B.G. Verghese, 'Who's afraid of a uniform civil code?' The Hindu' (13 August 2003)

<<http://www.thehindu.com/thehindu/2003/08/13/stories/2003081300341000.htm>>

