



UNIFORM CIVIL CODE IN INDIA: A PRECISE STUDY

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Abstract: “Uniformity in law secures citizen equality, enhances social harmony and upholds justice.” India has achieved Uniformity in criminal law by covering all aspects which are included in the penal Codes and Code of criminal procedure. But the question of bringing a Uniform Civil Code is unsettled. Public opinion on this is even-S1even. Some take it as a progressive step and the rest either refuse or remain silent. “**The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India**”¹. The state is required to bring a Uniform Civil Code as per Article 44 of the Constitution of India. Bringing Uniform Civil Code will aid and assist in edifying unity among citizens. It protects vulnerable groups from discrimination and ensures all persons are treated equally irrespective of their religion. The ideology of UCC was first suggested in the Constituent Assembly on **23rd November 1948**. Dr B.R Ambedkar’s debates highlighted that “The only province the Civil Law has not been able to invade so far is Marriage and Succession”². Those are governed by personal laws. Personal law varies from one religion to another. Bringing UCC to effect is like finding a needle in a haystack. There are multiple hurdles in the implementation of the law. This Article sheds light on Uniform Civil Code and its historical backdrop, marking the stages: from Article 35 of the draft Constitution till its adoption into Part VI of the Indian Constitution, 1950 under Article 44. Discussing the need for UCC and analyzing the version of UCC in Goa and many other countries. Identifying the difficulties in bringing up UCC and trying to find keys to such locks.

IndexTerms: Uniform Civil Code, Personal laws, Constituent Assembly, Constitution of India, Article 44.

1. INTRODUCTION:

1.1 DEFINITION:

“Uniform Civil Code means the common Civil Code or common law for every citizen residing in India irrespective of religion and caste”³

1.2 ARTICLE 44:

“Uniform Civil Code” under Article 44 of the Indian Constitution says that:

“The State shall endeavour to secure the citizens a Uniform Civil Code throughout the territory of India”

Article 44 secures the citizen to bring a Uniform Civil Code. Criminal law attained Uniformity in the early 1860s under colonial rule but Civil law is still based upon personal laws. Personal law means the set of legal rules and regulations which govern personal relationships and other matters related to the family. Personal law governs matters like adoption, marriage, inheritance, divorce, child custody and property rights⁴. These laws are different from one to another religion and also differ within them. By having such differences it makes law differently applicable to them. For instance, Muslim personal laws allow polygamy but Hindu law makes it punishable. In this case, there is no equal treatment under the law and holds discrimination. Every citizen should be equally treated irrespective of their caste or religion. The Uniform Civil Code (UCC) brings one law for India, which would be applicable to all religious in matters such as marriage, inheritance, adoption and divorce⁵. The need in the present case was enshrined in many cases as a sign for the legislature to implement Article 44.

¹ The Constitution of India, 1950, Art 44

² Constituent Assembly Debates, Volume VII—4th November 1948 to 8th January 1949, speech by Honourable Dr. B. R. Ambedkar

³ The Uniform Civil Code in India Bill, 2020, Bill No. II of 2020

⁴ <https://uollb.com/blog/law/what-is-personal-law>, last visit on 19.11.2023

⁵ <https://static.mygov.in/Indiancc/2021/08/mygov-999999999733465943.pdf>, last visit on 19.11.2023

2. HISTORICAL BACKDROP:

2.1 RULE OF BRITISH CROWN:

1)BEFORE :

In India codification began at the time of British colonial rule. Before the Britishers entry people were governed by personal laws. In India these laws are largely based on religious traditions. These personal laws governed both Civil and criminal matters. For instance, Arthashastra, Manu Smriti, Yajnavalkya Smriti are the leading law Codes of ancient times. Mohammedan criminal laws were also penal laws that prevailed in most parts of India before the advent of British law.⁶

2)AFTER:

At the beginning of the rule there was no trouble, but later on the crown found it difficult to administer its subjects because of diversity in India and complicated Codes. Therefore the British rulers codified criminal law for easy administration of the country. In the year 1860 personal law related to crime began to codify into uniform criminal laws like the Indian Penal Code, the Code of criminal procedure, the Indian Evidence Act etc, but law related to marriage, adoption, divorce, succession and some other Civil matters was not codified and dealt with the personal laws itself. The British government was not interested in codifying such Civil matters because of the complexity in interpreting various customs and their motive was only to gain profit rather than welfare for the people. In the end of the British rule, increase in personal issues to be dealt with the legislative pushed the government to form the B N Rau Committee for the purpose of codify Hindu law in 1941⁷. Other reformative laws such as the Child Marriage Restraint Act, Widow Remarriage Act etc, were only due to the pressure of the leaders.

2.2 POST INDEPENDENCE:

After Indian Independence, the Constitution was drafted. UCC was dealt under Article 35 of the draft Constitution⁸. After a long debate in the constituent assembly it stands in Article 44 under Part IV of the Constitution and for the time being it was kept as directive principles of state policy. Adoption of Article 44 is discussed in the further part of this Article.

2.3 THE UNIFORM CIVIL CODE IN INDIA BILL, 2020:

A bill called the Uniform Civil Code in India bill 2020 was introduced in the parliament for implementation of UCC. The preamble mention that it is “a bill to provide for the Constitution of the National Inspection and Investigation Committee for preparation of Uniform Civil Code and its implementation throughout the territory of India and for matters connected therewith or incidental thereto”.⁹ However the bill was not yet passed by both the houses of the parliament.

3. STAGES OF UCC FROM ARTICLE 35 TO 44:

When the Constitutional makers drafted the Constitution UCC was held under Article 35. Uniform Civil law was criticised largely during the constituent assembly debates. The Article 35 was opposed by various leaders including Mohammad Ismail (member from Madras: Muslim), Ahmed Ibrahim, B Pokar Saheb, Naziruddin Ahmed and Mehboob Ali Baig. They suggested for addition of proviso like:

“Provided that any group, Section or community of people shall not be obliged to give up its own personal law in case it has such a law.”¹⁰

“Provided that the personal law of any community which has been guaranteed by the statue shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law.”¹¹

“Provided that nothing in this Article shall affect the personal law of the citizen.”¹²

All highlighted the importance of personal laws and provide an overriding effect over Article 35. But these amendments were not supported by a majority of members and were not incorporated into the Article. Finally, after long debate the motion was adopted “The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India”¹³ was adopted without any amendments into Article 44 under directive principles of state policy (Part IV).

4. NEED FOR THE PRESENT:

Today the need for Uniform Civil Code is demanded by society. It is the right time to bring it out of DPSP. Implementation of UCC shall empower women through equality, promote unity among the people and UCC also simplifies the legal framework and reduces complexities.

In the **Shah Bano Case (1985)**¹⁴ a woman approached the Supreme Court for claiming maintenance as per Section 125 of the Code of Criminal Procedure. Where her husband divorced her after 40 year of marriage by giving her Triple Talaq refused to give maintenance as per Muslim personal law. The Supreme Court in this case held that Section 125 of CrPC is applicable to all citizens

⁶ PSA Pillai, CRIMINAL LAW 15 (2019).

⁷ <https://static.mygov.in/Indiancc/2021/08/mygov-999999999733465943.pdf>, last visit on 19.11.2023

⁸ https://ignca.gov.in/Asi_data/7589.pdf, last visit on 19.11.2023

⁹ The Uniform Civil Code in India Bill, 2020, Bill No. II of 2020

¹⁰ Constituent Assembly Debates, Volume VII—4th November 1948 to 8th January 1949 said by Mr. Mohamad Ismail Sahib

¹¹ Constituent Assembly Debates, Volume VII—4th November 1948 to 8th January 1949 said by Mr. Naziruddin Ahmad

¹² Constituent Assembly Debates, Volume VII—4th November 1948 to 8th January 1949 said by Mahbood Ali Baig Sahib Bahadur

¹³ The Constitution of India, 1950, Art 44

¹⁴ Mohd. Ahmed Khan vs Shah Bano Begum And Ors on 23 April, 1985, AIR 945, 1985 SCR (3) 84

irrespective of religion. Then Chief Justice, Y.V Chandrachud, observed that a “Common Civil Code would help the cause of national integration by removing disparate loyalties to law”.¹⁵

4.1 CASE ANALYSIS:

In **Sarla Mudgal vs. Union of India Case (1995)**¹⁶, Supreme Court again directed the government to bring Uniform Civil Code. This case revolves around the question whether a husband who is a Hindu, married according to the Hindu law, by converting to Islam can validate his second marriage. The Supreme court in this case held that embracing Islam for the purpose of second marriage is an abuse of Personal laws. To avoid such complexities it is necessary to bring UCC into the picture.

In **Paulo Coutinho vs. Maria Luiza Valentina Pereira case (2019)**¹⁷ the Hon’ble Supreme Court recommended the need for UCC. Additionally 22nd law Commission of India¹⁸ opted to get opinion from religious groups and the general public regarding Uniform Civil Code. Time through such cases reminds the legislature to bring Uniform Civil Code to cope with the requirement and demand of the society and to solve the various complexities.

5. PROBLEMS IN IMPLEMENTATION:

UCC brings out a variety of goodness but there are many problems in bringing a Uniform Civil Code, includes:

5.1 HIGH SCOPE OF DIVERSITY IN INDIA: .

Since India is a widely populated and diverse country, bringing any law into force is quite challenging. In particular, UCC has been supported as well as criticized by the public. It affects the entire population therefore much consideration should be taken on its implementation.

5.2 CONFLICT WITH FUNDAMENTAL RIGHTS:

UCC is in conflict with the fundamental right to freedom of religion. Personal laws provide the people the right to practice, profess and propagate religion. Bringing a common Civil Code confers the above said right.

5.3 MINORITY BECOMES INFERIOR:

Bringing Uniform Civil Code may suppress minority groups and their practices. It increases the dominance of the majority which may force the minority to take up other practices of the majority group.

5.4 LACK OF AWARENESS:

Lack of awareness is a serious issue. Without awareness even implementation of UCC is of no use. People should know about it to benefit from it. In India many people are unaware of what UCC is and to the worse some are in wrong interpretation.

6. UCC IN OTHER PLACES:

6.1 GOA:

Since Portuguese rule in Goa the Goan Civil Code is considered to be a Uniform Civil Code. In India, Goa is the one and only state to have a Uniform Civil Code. This Civil Code is more Uniform and gender just. “It is applicable irrespective of religion, caste or creed in matters relating to personal and family laws such as marriage, dotal regimes, divorce, succession, inheritance, registration of births, deaths, and rights of women and children.”¹⁹

6.2 FRANCE:

Napoleonic Code or otherwise called as Civil Code of the French is the Uniform Code of France. Prior to this Code there was no single law. Like India ,they were also governed by various laws based on customs.

6.3 OTHER COUNTRIES

Islamic countries have a combination of Civil Code based upon Sharia Law. Other countries like US, Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Egypt and Ireland do follow Uniform Civil Code. Knowing about common Civil Code of other countries in one or the other way helps in implementing Uniform Civil Code in India.

7.SUGGESTION:

Steps should be taken to overcome all the problems in bringing a Uniform Civil Code. some suggestive steps include:

7.1.SPREADING AWARENESS:

Spending awareness to the general public helps in easy and smooth implementation of the Code. In order to implement a Uniform Civil Code, people 's support is essential. To get such support in the first place educating them is important. Educating and spreading awareness to people is essential. Improper education or lack of awareness not only reduces support to this motion but may also lead to misinterpretation. Proper understanding about the Code helps in easy implementation and nullifies misinterpretation of the Code.

¹⁵ <https://www.thehindu.com/opinion/lead/Union-Minister-Venkaiah-Naidu-on-Uniform-Civil-Code-Why-not-a-Common-Civil-Code-for-all/Article62116269.ece> ,last visit on 19.11.2023

¹⁶ Smt. Sarla Mudgal, President, ... vs Union Of India & Ors on 10 May, 1995,AIR 1531, 1995 SCC (3) 635

¹⁷ Jose Paulo Coutinho vs Maria Luiza Valentina Pereira . on 13 September, 2019

¹⁸ <https://lawcommissionofindia.nic.in/notice/Uniform-Civil-Code-public-notice/>, last visit on 19.11.2023

¹⁹ <https://timesofindia.indiatimes.com/city/Goa/success-of-common-Civil-Code-in-Goa-must-pave-way-for-nationwide-acceptance-of-ucc/Articleshow/103147544.cms> , last visit on 19.11.2023

Implementation in a country like India with diversity of population stands as another problem. People should be enriched with the benefits of UCC . It can be done by various modes including use of social media, by camps, awareness in schools, colleges and workplace.

7.2. STRATEGIC IMPLEMENTATION:

It is to bring UCC implemented step by step separately with proper periodical intervals. It helps people to adapt with the change. Prior information should be given before any implementation so that people get ready and not provoked.

7.3. MODELS:

In the globe, Uniform Civil Code is not new. Many countries follow Uniform Civil Code. Implementation steps of such countries should be taken as a model and the best and suitable one should be put into action for better implementation in India. Goa is a great example, having Uniform Civil Code applicable to all its subjects irrespective of religion they belong.²⁰

7.4 RESOLVE THE CONFLICT:

Having discussion with religious groups and criticizing groups and understanding the actual problems. Also formulation of a special committee in this regard. Proper understanding should be given to minority groups that they are protected and will not be dominated by the majority groups. Removing the political motive and secure the welfare of the people at the end.

8.CONCLUSION:

Uniform Civil Code is very much essential for a country like India. Proper implementation of this will bring out betterment in both legal as well as social aspects. Socially, enhances gender equality, helps in women empowerment, eliminates loopholes in personal laws, and ensures equal application of law to all citizens. Changes are inevitable and law is not an exception. Frequent amendments and changes according to the need are essential. One such change is the bringing of UCC. Corrective change always brings betterment.

9.REFERENCE:

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²⁰ Jose Paulo Coutinho vs Maria Luiza Valentina Pereira on 13 September, 2019