



THE NEED FOR A UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

Part IV of the Indian Constitution lays forth the Directive Principles of State Policy. Even though these principles are unenforceable, they are essential to the administration of the country. One such guiding element is Article 44 of the Constitution, which outlines a state's obligation to adopt a Uniform Civil Code. The research focuses on the Uniform Civil Code's essential meaning and repercussions, whereas the paper focuses on the Uniform Civil Code's perspectives and application. We will learn about the connection of the Uniform Civil Code to secularism, as well as the judgments and viewpoints of law and order about the Uniform Civil Code, as we progress through the research paper. The focus of this research is to provide readers with a greater understanding of the Uniform Civil Code, as well as the reasons for its existence and the never-ending concerns about its significance. The research will explore the barriers to India's effective adoption of a Uniform Civil Code and suggests ways to overcome them, all while keeping current developments in India in mind. Given India's delicate communal relations, the researchers concluded that under the current situation, a Uniform Civil Code with clear and appropriately revised provisions would be best for India's interests.

Keywords: Personal Law, Right to Freedom of Religion, Secularism, Uniform Civil Code.

INTRODUCTION

In layman's terms, the term "Uniform Civil Code" refers to "one nation, one law." When we talk about the civil code, we're referring to a collection of laws that fall under the category of personal relationships. Contract law, property law, marriage law, and so on are examples of such laws. India has always maintained a Uniform Criminal Code, which is widely acknowledged across the nation with a few important deviations, even before the introduction of the constitution. While we do not yet have a Uniform Civil Code, we do have consistency in numerous parts of civil law, including contracts, the Transfer of Property Act, and even the

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Civil Procedure Code. Personal laws, on the other hand, are excluded from the requirements of equality and uniformity. Different religious groups in the nation have their own set of personal laws, which we call "personal laws."

“The State shall make every effort to provide for the inhabitants of India a uniform civil code across the territory of India,” according to Article 44 of the Indian Constitution. There is a Uniform Civil Code that is followed in several contemporary democracies across the globe. The goal behind the establishment of the Uniform Civil Code in India was to address the divisive nature of the Indian Personal Laws. It was debated for about two days in the Constituent Assembly before being included in the constitution as part of the directing principle of state policy found in Article 44 of the Constitution. But because of the socio-economic situation in the nation as a result of partition and independence, it was unable to be executed and was instead left to the next parliament to enact whenever the majority desired.

Application of Article 25 is critical in this context; the major point of argument against the introduction of a unified civil code is that it would violate Article 25, which protects the right to freedom of religion. There is no statistical data available to indicate which segment of society is opposed to the idea of a uniform civil code, although it appears from the debates in the constituent assembly and contemporary times that minorities, particularly Muslims, believe that this is an infringement of their fundamental right to practice their religion, which they believe is being violated. The judiciary has often stated and proposed that a Uniform Civil Code be established in the nation to handle a wide range of concerns relating to personal law. Between 1985 and 2015, there have been around 7 Court decisions that have emphasized the necessity for a Uniform Civil Code in the United States. Although the power and solution do not lie with the judiciary, but rather with the legislature, as the Supreme Court has often said, the judiciary does have a role to play. Accordingly, the article examines the necessity for a Uniform Civil Code, the misconception of the concepts of a uniform and common civil code, and the best course of action moving ahead. A secondary goal of the study is to explain and contradict the widely held belief that a code of this kind would violate Article 25 of the UN Charter.

CONSTITUENT ASSEMBLY & UNIFORM CIVIL CODE

When this motion was passed, various Muslim leaders opposed this and stated that this is against the basic essence of the fundamental right to religion. Various leaders like Mohammad

Ismail Sahib, Naziruddin Ahmed, Mahmood Ali Baig Sahid Bahadur, and others insisted that personal laws shall not be altered concerning this article.

Shri Alladi Krishnaswami Ayyar addressed these contentions by stating that Uniform Civil Code runs into every department of civil relations to the law of contracts, to the law of property, and various similar areas. *“How can there be any objection to the general statement here that the State shall endeavour to secure a uniform civil code throughout the territory of India?”* Shri KM Munshi said on the competency of the parliament that the whole object of Article 35 concerning the powers of the parliament is that, *“whenever in future the parliament or rather the majority of the parliament thinks proper an attempt should be made to unify the personal law of the nation”*. Dr. BR Ambedkar even mentioned, *“We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. This country has also practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far.”*

After observing the constituent assembly debates, the intention of our forefathers is very clear. They believed that the ultimate solution to the ever-growing problem of divisive personal laws is a Uniform Civil Code. The intention was to divorce personal laws from the aspect of religion to implement the idea of equality in its true spirit. In India, personal laws are controlled by religious conventions and beliefs held by each citizen. It should be noted that this is not true for every community. The Hindu personal laws had previously been reviewed, and as a result, a piece of legislation known as the Hindu Code Bill¹ was submitted, which was nothing more than the secularisation and codification of Hindu law. Before the passage of this Act, there were a variety of practises and regulations that were discriminatory.

The initial goal of this law, while it was in the process of being drafted, was to establish a consistent code for every group; however, after watching the opposition from minorities, it was particularly devoted to Hindus. Even after the passage of this legislation, it has been subjected to several revisions, which is exactly how a law should be. It is always a developing concept, rather than a static concept or notion. Other community ordinances, on the other hand, seem to be lacking in this regard. If one looks at the rules that are in place for Muslims in the nation, they

¹ 'Hindu Code Bills - Wikipedia' (En.wikipedia.org, 2021) https://en.wikipedia.org/wiki/Hindu_Code_Bill accessed 16 June 2021.

are regulated by Sharia, as outlined in the Sharia Act 1937², which is based on the teachings of the Prophet Muhammad. It is, however, under the jurisdiction of an unelected non-governmental organisation (NGO) known as the All India Muslim Personal Law Board, which was established in 1973. This organisation was established to interpret and execute Shariah law in the United States.

They have published a book in the year 2001 which had all the Muslim personal laws which are to be implemented in this country for Muslims. That book by far justifies and encourages all types of atrocities that are been done in the name of personal laws. Issues like 'Talaq-e-Biddat'³ which was recently struck down⁴ by both the Judiciary as well as Parliament prevail in that book. Issues like polygamy, un-conveyed divorces, and even racism in terms of Arabs and non-Arabs are highlighted in the book.

Coming to the compendium of laws by AIMPLB, Chapter seven, section 117 clause 3 of this book says that regard shall be held liable in terms of descent among the Arabs, especially the Quraish, and those non-Arab families who have preserved descent. People in the rest of the non-Arab Muslim world are mutually equal. On this very basis, an Arab descent girl can terminate her marriage to a non-equal contract by her guardian, and a guardian has the right to terminate the marriage of an adult woman to a non-equal. This is dividing the Muslims into three categories Arab region, Muslims of Indian origin who have preserved descent, and other Muslims who are equal among themselves and do not share parity with the first two. Quran in the verse 49.13 specifically says all have descended from one male and female and the tribes and nations are just for identity but honour belongs to the righteousness.

The triple talaq e biddat was something that had no reference in the sharia or Quran, but it was stated in Part 2, chapter 3, section 13 of the Quran, which was a rare occurrence in the Islamic tradition. It indicates that it is illegal; nonetheless, if it is spoken, it will take effect immediately. Not only that, but in the same portion of chapter 2, it specifies in sections 6, 7, and 3 that talaq

² 'The Muslim Personal Law (Shariat) Application Act, 1937 | Legislative Department | Ministry Of Law And Justice | GoI' (*Legislative.gov.in*, 2021) <https://legislative.gov.in/actsofparliamentfromtheyear/muslim-personal-law-shariat-application-act-1937> accessed 16 June 2021.

³ 'Triple Talaq In India - Wikipedia' (*En.wikipedia.org*, 2021) https://en.wikipedia.org/wiki/Triple_Talaq_in_India accessed 16 June 2021.

⁴ 'Supreme Court Sets Aside Instant Triple Talaq In Split Verdict' Business Standard (New Delhi, 08 Jan 2020) https://www.business-standard.com/article/current-affairs/supreme-court-sets-aside-instant-triple-talaq-in-split-verdict-117082300059_1.html accessed 13 June 2020.

return on the wall, which is not even relayed to women, becomes effective, as does talaq spoken in hazl or jest, as well as talaq spoken under duress. The ullem of AIMPLB claims that intention in talaq is unimportant, even though the Quran repeatedly mentions how intention is very essential. The Quran also does not accept immediate talaq or talaq performed under pressure or coercion. Article 25 of the Constitution of India protects a wide range of discriminatory religious practices that are legal in the country. The rules and customs that are now in effect in India are somewhat at odds with those found in the original text of the Bible. Even if one of these activities is following the original scriptures, it should, in my view, be prohibited by law since it infringes the basic rights of the persons involved.

Judiciary and Uniform Civil Code

The Supreme Court of India has often emphasised the need of having a unified civil code across the country. In their statements, they have consistently argued that the legislature has failed to produce legislation to address all of the difficulties relating to personal laws. Supreme Court decisions in cases like Sarla Mudgal, Shah Bano, and several more decisions have made the court's position quite apparent. Although a significant decision has been handed down, it must be taken into account in terms of the Uniform Civil Code. In the case of *Nikhil Soni v. Union of India*⁵, the court made it very apparent that though activity may be considered a religious activity, it does not automatically constitute an important and important element of the religion. When it comes to the application of Article 25, there are two categories to consider: the necessary religious rituals and the secular activities or acts that are not necessary for nature.

It is within the legislative authority to control the latter behaviours, and as a result of this ruling, the legislature may impose restrictions on activities such as Sati, Dowry, Polygamy, NikahHalala, Talaq-e-biddat, and other similar rituals. This interpretation is very crucial for this investigation. This gives the legislature the authority to amend personal laws, if necessary. When it comes to the fundamental substance of religion, it is critical to recognise that personal rules do not fall within the purview of the five fundamental principles of Islam. Shri KM Munshi also mentioned in the debates of the constituent assembly that when the Sharia Act of 1937 was implemented, many Muslim sects such as the Khojas and Kutchimenons were dissatisfied because they were converted and therefore followed Hindu customs, however, certain members of the Muslim community with the centre legislature passed it and after that, they were forced to follow it, and that is where the rights of Muslims were first recognised.

⁵ *Nikhil Soni v. Union of India*, (2015) MANU/RH/1345/2015 (India).

If one travels to any European nation, one must comply with the civil code in effect in that nation. Essentially, the objective was to separate religion from personal law. He cited the Hindu code bill that was now before Parliament, claiming that many of the provisions included in the bill conflict with the rules established in Manu and Yagnyavalkya. Society will never be able to give women their fundamental right to equality if they believe that inheritance should be a part of their faith. The point he was attempting to make to the assembly was that, even though some provisions of the Hindu Code Bill were found to violate the fundamental texts, the legislature still enacted them to ensure equality to Hindus. Law is a highly dynamic notion, and as a result, it should be modified to meet the changing demands of society as a whole.

Desirability

The point that he was trying to bring to the assembly was that even when the legislature saw that certain laws in the Hindu Code Bill are against the basic scriptures, they still implemented them to provide equality to Hindus. Law is a very dynamic concept and hence it should be changed as per the growing societal needs.

To understand the desirability of the Uniform Civil Code one has to understand the difference between common and uniform civil code. The common code is used for a broad sense where one law is made to govern every community, however, uniform laws mean that the personal laws will be different for different communities but they will be based on a uniform principle of gender justice and liberty. For example, the process of marriage or how it is conducted shall be different for different communities, but the rights and obligations out of that bond should be based on uniform principles like minimum age to get married. Similarly, divorce can be performed as per the process of the religious practices, but maintenance and alimony coming out of such acts shall be based on uniform principles.

Dr. B.R.Ambedkar addressed this issue and said, *“My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform code of laws for a country as vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship”*.

“We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments

Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner that we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question of whether we could do it. As I say, we have already done it'

Conclusion

Personal laws have a well-established reputation for being very controversial. The only obvious remedy is to codify personal laws, which can only be done by legislation. For the time being, the only proposal I have is that we should have a draught of a Uniform Civil Code before deciding whether or not to apply it. The notion that only minorities' rights would be violated is a very limited perspective of the situation. Even the rights of the majority community, in my view, will be infringed, and one can only comprehend this once we have a draught to debate. Even now, Ashwini Upadhyay has filed five petitions in the Supreme Court challenging sections of the Uniform Civil Code.⁶ However, since the courts lack the authority to legislate, they may be unable to intervene.

Although the court may at least suggest the creation of a draught that may be published in the public domain to gather public opinion, it is up to the legislature to act on this matter in its judgment. Article 25's implementation is quite obvious, thus there will never be an issue during the implementation of UCC. It is past time for us to begin developing a UCC module to obtain a clearer perspective. It's time to put the constituent assembly's purpose into action. This study has simply shown the need for a UCC and potentially proposed how it may be implemented, but it will be difficult to implement until we have a draught for it. Because the judiciary is not elected by the public, they can only make impartial decisions or provide suggestions. This might certainly be a solution to India's human rights dilemma, which is created by conflicting personal laws.

⁶ Apoorva Mandhani, 'Marriage, divorce, adoption — the 5 pleas by a BJP leader in SC that seek uniform civil laws' The Print (15 March 2021) <https://theprint.in/judiciary/marriage-divorce-adoption-the-5-pleas-by-a-bjp-leader-in-sc-that-seek-uniform-civil-laws/621588/> accessed 13 June 2020.