



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Uniform Civil Code: Critical Analysis

Riya Maggu^a

^aSRM University, Sonipat, India

Received 07 July 2023; Accepted 03 August 2023; Published 07 August 2023

The benefaction of British rule in India is remembered for its major contribution to the law establishment and the reason why India became a common law country. The one remarkable feature of British rule was the origin of personal laws, Unlike the Indian Penal Code or The Code for Civil Procedure that uniformly applies to all the people in the country, personal laws are certainly an exception to this establishment. The matters related to marriage, adoption, divorce, succession inheritance, etc., are differently governed by the personal laws of different religions because there is no specific or individual law governing this in India. This problem can be replaced by introducing the Uniform Civil Code also known as 'One Nation-One Law'. The drafting committee members, as well as that of the constituent assembly, have strongly emphasized the need for the same and there were many arguments among the members as to the application of UCC or to continue with the personal laws only and as a result, the personal laws are governing the matters of marriage, adoption, etc. The government has realized the need to apply the UCC and remove personal laws. What would be the main concern for us would be, whether this very action of the government or the law-making agency would be affecting the secular structure or not and what the future after UCC will be holding for us as well as that for the courts of India.

Keywords: *uniform civil code, directive principle of state policy, constituent assembly.*

INTRODUCTION

Part IV of the Constitution of India provides for the Directive Principles of State Policy under Article 44 lays the provision for Uniform Civil Code and states that *“The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”*.¹ The Uniform Civil Code (herein referred to as UCC) aims to replace the personal laws that are based on different religious or spiritual texts, practices, and customary practices that are different for different religions and have a difficult governing. Personal laws mainly deal with several matters that are: marriage, adoption, divorce, succession or inheritance and guardianship. The application of the UCC would mean that the Hindu Marriage Act 1955², Hindu Succession Act 1956³, Muslim Personal Law Application Act 1937⁴ and other such laws would technically be dissolved and a uniform code would be introduced that will be dealing with all these matters, that the personal law is dealing with currently. Whenever there is a mention about the implementation of any new act or certain kind of provision we always emphasize the government that is in force, whether that government will be able to enforce the legislation. Similarly, this debate of UCC is predominantly divided into three governmental stages: The British rule, The Congress Government the rise of BJP, and the post-government scenario.

The Britishers were more inclined towards maximising the two main aims and the primary reason why they established their rule that were primarily ‘Crime’ and the ‘Revenue’ and establishing those laws that would increase their revenue intake for example the foreign policy under the Britishers and the decline of handicraft industry, on the other hand, the criminal laws that will help to effectively govern the country and will keep the people in their control. The Britishers were a bit hesitant to deal with personal laws because they felt that this area held a very sensitive approach towards the citizens and it may result in the decline of British dominance in India. So, the Britishers never made an approach to deal with the personal laws

¹ Constitution of India 1950, art 44

² Hindu Marriage Act 1955

³ Hindu Succession Act 1956

⁴ Muslim Personal Law Application Act 1937

instead they created uniform laws for governing matters of crime and civil breach like the Indian Penal Code 1860, the Contract Act 1872 and numerous other legislations.

Post-Independence the makers of the constituent assembly have anonymously debated whether to adopt the UCC or should continue with existing personal laws, many debates surrounding the same have a political undertone going on. One of the most important and perhaps the most controversial assertion presented was:

“The contention of the Muslim members was partially the result of their existential anxiety given a numerically weaker community was left in India after the bloody partition, and therefore, need for community protection, even if it was something as non-justiciable as the UCC.”⁵

This clause of the Uniform Code has generated two main questions before the members of the constituent assembly; firstly, whether should it be included as part of a fundamental right or not. Secondly, should it be included as a provision under the state policy i.e. DPSP which are not enforceable in nature, unlike the fundamental rights that are enforceable in nature? This was settled by way of a vote with a majority of 5:4. The sub-committee on fundamental rights headed by Sardar Vallabhbhai Patel decided that securing a UCC was not within the scope of fundamental rights⁶, so they insisted on including it as a provision under the DPSP. Members of the constituent assembly had strong stances on the same.

One of the members of the constituent assembly from Bengal, Naziruddin Ahmad stated that *“certain civil laws in all communities were “inseparably connected with religious beliefs and practices”*. He felt the UCC would come in the way of Article 19 of the draft Constitution (now Article 25) which guarantees the right to freedom of religion subject to public order, morality, and health. While he was not

⁵ Nachiket Midha, ‘Why Uniform Civil Code is at a critical inflection point?’ (Observer Research Foundation, 30 June 2022) <<https://www.orfonline.org/expert-speak/why-uniform-civil-code-is-at-a-critical-inflection-point/>> accessed 02 July 2023

⁶ Diksha Munjal, ‘Explained, The Uniform Civil Code’ *The Hindu* (06 November 2022) <<https://www.thehindu.com/news/national/explained-the-uniform-civil-code/article66105351.ece>> accessed 02 July 2023

against the idea of a uniform civil law, he argued that the time for that had not yet come, adding that the process had to be gradual and not without the consent of the concerned communities".⁷

Therefore, there were many dissenting opinions concerning the implementation of UCC, since not all members of the assembly were completely in favor of not implementing it. On November 4th, 1949 Dr. Ambedkar presented the draft of the constitution, about a year and a half later, the UCC was included under DPSP as the draft article 35.⁸ In the present time, while we study the living document of India i.e. the constitution, the Uniform Civil Code is under DPSP.

The second tier of this development continued when the Congress government came into power, which also didn't make any kind of efforts to implement the same since the landmark judgment of the Shah Bano⁹ case was passed in the same year and the legislation passed by the concerned government overturning the judgment i.e., the Muslim Women (Protection on Divorce Act) 1986¹⁰ was passed result as a major drawback to the judgment of Supreme Court.

The Uniform Civil Code occupied centre stage when the BJP government has come into majority since the elections of 2014. The BJP aims to enforce the UCC and has emphasized its need for national integration, uniformity, and gender justice, but at the same time is hesitant to implement due to democratic hesitancy, since this area concerns the branch of religion as well as the secularity of the nation, which is a debatable yet controversial issue in our country.

THE NEGATIVES OF IMPLEMENTING UCC

India doesn't have uniformity of laws when it comes to matters of marriage, adoption, succession, and divorce. The Hindu Code bill developed in the mid-1950s deals at the time of general election to deal with these issues for Hindus. Similarly, the Muslim code bill developed by the supremacy of Muslim community leaders and the custom deals with matters concerning issues, and the same is true for all different religions.

⁷ *Ibid*

⁸ 'The Constitutional History of UCC' (CLPR) <<https://clpr.org.in/wp-content/uploads/2017/11/UCC-Part-1-Constitutional-History.pdf>> accessed 02 July 2023

⁹ *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945

¹⁰ Muslim Women (Protection of Rights on Divorce) Act 1986

Law enforcement has uniform laws for criminal matters and civil matters like the Indian Penal Code (1860)¹¹, The code of civil procedure (1859)¹² and the Code of criminal procedure (1973)¹³ those laws which are uniformly applicable to all citizens irrespective of the contention to which religion they belong to, but not in its truest sense we can say that these are the finest examples of ‘One Nation - One Law’. The law of anticipatory bail is different for one state or another. So, if this is in existence it is not truly a uniform law so how can the applicability of UCC ensure uniformity if there is a plurality in already existing laws?

Now, diverting attention to the already codified personal laws, for instance, the Hindu code bill is not uniformly applicable to all Hindus as well. Constitutional law scholar Faizan Mustafa notes that while marriages among close relatives or what we call a Sapinda Relationship are prohibited by the Hindu Marriage Act of 1955¹⁴, they are considered auspicious in the south of India. Even the Hindu Succession Act of 1956¹⁵ made several compromises and could not make the daughter a coparcener till 2005.¹⁶ Similarly, there is no uniformity or applicability of personal laws, different tribal communities govern themselves with their respective customary laws.

The implementation of UCC would be an interference with one of the most enshrined features of our constitution which is fundamental rights. Article 25 of the Constitution provides for *freedom of conscience and free profession, practice, and propagation of religion*.¹⁷ This very provision aims to preserve the freedom to practice any religion and the right to manage its affairs¹⁸. The tribal communities continue to be governed by their respective practices and the customary laws and they are considered as the weaker or the minority sections of the society. Article 29 lays down the protection of the interests of minorities and gives protection to those sections who have a distinct language, and culture and have the right to conserve the same.¹⁹ The

¹¹ Indian Penal Code, 1860

¹² Code of Civil Procedure 1859

¹³ Code of Criminal Procedure 1973

¹⁴ Hindu Marriage Act 1955

¹⁵ Hindu Succession Act 1956

¹⁶ *Ibid*

¹⁷ Constitution of India 1950, art 25

¹⁸ *Ibid*

¹⁹ Constitution of India 1950, art 29

implementation of the same would be an interference to the fundamental rights of the citizens which are enforceable in the court of law.

The Law Commission of India²⁰ in August 2018 submitted its report saying, 'the Uniform Civil Code is neither necessary nor desirable at this stage in India. It also stated that 'secularism cannot be contradictory to plurality'.

The UCC would be creating a code by taking all the best and just provisions from different religious code bills and incorporating them into the code. For instance, taking provisions from the Hindu Marriage Act (1955) can be converse, but the main issue concerning the same is that citizens may protest for the same that their religion doesn't support this clause or any different contention since the same is connected with the personal laws.

THE POSITIVES OF IMPLEMENTING UCC

There are two sides to every coin i.e. the negative side and the positive side. Earlier in the section we discussed that what are the arguments that are against the implementation of the Uniform Civil Code like, the interference with fundamental rights, personal laws, and the disinclined opinions of the citizens regarding the provisions of the code from different religions. This section will deal with all the arguments in favor of implementing the Uniform Civil Code.

The Uniform Civil Code isn't merely about being the result of politics but aims to cater to the unification of India because of the structural changes taking place at the time. The makers of the constitution or the members of the constituent assembly didn't make any provision about how the future parliamentarians or the law-making agency would be dealing with the issue concerning the codification of personal laws and this will be a step to correct the wrongs made by the sovereign post-independence and partition.

²⁰ Krishnadas Rajagopal, 'Uniform civil code neither necessary nor desirable at this stage, says Law Commission' *The Hindu* (31 August 2018) <<https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article61498390.ece>> accessed 02 July 2023

The constitutional experts had given importance to the application of the Uniform Civil Code will bring an affront to the nation's unity.²¹ This will mean that when the laws governing crucial issues like marriage, divorce, adoption, etc., will be the same it will bring the different communities on the same and a common platform and will ensure the national integration of different religions. Goa is the only state in India that has brought the Uniform Civil Code and all the other states have started making efforts to enforce the same Uttarakhand is one of the finest examples of this.

The implementation of the UCC would reduce gender differentiation in society and will bring gender equality. Dr. Ambedkar pioneered the cutting-edge causes of gender equality, which led him to create the UCC in the 1950s.²² He was always been a strong supporter of the UCC. For instance, the Muslim personal law allows for polygamy which is very discriminatory on the part of the women, so with the implementation of the same this very rampant problem will be eliminated. India is celebrating Azadi ka Amrit Mahotsav with fervor and that would not have been possible without the contribution of women and men from all backgrounds of our highly diversified society.²³

Therefore, this will be a very critical approach since the parliament whilst considering this very crucial yet analytical concept all the pros and cons, on the other hand how the citizens would react to this very implementation or whether there will be a positive response or a negative response to the same.

WHAT OPINION DOES THE COURT HOLD?

The courts in India in several judgments they have pronounced in the time being have specifically emphasized the need for the applicability of UCC in India. The Delhi HC while hearing a petition filed in 2017 concerning the application of the Hindu Marriage Act (1955) to a tribal couple belonging to the Meena community of Rajasthan, since this act doesn't apply to

²¹ Nisha Anand, 'Uniform Civil Code: Will it work for India? Arguments in favour and against' *The Hindustan Times* (10 December 2022) <<https://www.hindustantimes.com/india-news/uniform-civil-code-will-it-work-for-india-arguments-in-favour-and-against-101670605674458.html>> accessed 02 July 2023

²² *Ibid*

²³ *Ibid*

the people belonging to a tribal community or Scheduled Caste or Scheduled Tribes. The court while pronouncing the judgment held that ‘The act would apply to the married parties since they have solemnized their marriage as per the ceremonies of Hindu religion’. One of the most important contentions of the court while pronouncing the judgment was that ‘In modern Indian society, which is gradually becoming homogenous, the traditional barriers of religion, community, and caste are slowly dissipating’, the court also added that, ‘The youth of India belonging to various communities, tribes, castes or religions who solemnize their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws, especially about marriage and divorce.’²⁴

The case of **Shah Bano**²⁵ is perhaps the most important and landmark judgment when it comes to the application of the UCC in India. The case concerns a 62-year-old Muslim woman whose husband denied paying her the maintenance for her as well as their five children when he pronounced irrevocable Talaq to her after 40 years of marriage. Shah Bano went to court and claimed that maintenance should be paid to her under section 125 of CrPC²⁶.

The SC in this case held that “Section 125 of the Code of Criminal Procedure that deals with provision of maintenance, would apply to every citizen of India irrespective of the religion or the caste they belong to”.²⁷ But this judgment created a very stark opposition from around the country and citizens asked whether the court has the power to interfere in the matters laid out in Muslim personal law as this will be violating the Muslim Personal Law (Shariat) Application Act 1937. However, this case is considered a landmark in Indian legal history, since it was a step towards deciding all these cases based on the interpretation of personal laws and the general laws as well, at the same also recognized the need to implement the Uniform Civil Code.

²⁴ Apoorva Mandhani, ‘Same family laws for all faiths – what’s Uniform Civil Code, and what courts say about it’ *The Print* (11 July 2021) <<https://theprint.in/theprint-essential/same-family-laws-for-all-faiths-whats-uniform-civil-code-and-what-courts-say-about-it/693782/>> accessed 02 July 2023

²⁵ *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945

²⁶ Code of Criminal Procedure 1973, s 125

²⁷ *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945

The Supreme Court remarkably noted that ‘it is a matter of regret that article 44 has remained a ‘dead letter’²⁸ and also observed that ‘a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies’ and that ‘it is the State which is charged with the duty of securing a uniform civil code’.²⁹

The Supreme Court in the case of *Pannalal Bansilal Patil v State of Andhra Pradesh*³⁰ held that “a uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by the rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute.”³¹

In the instant case of *John Vallamattom and Ors. v Union of India*³² The Supreme Court of India held that “there is no necessary connection between religious and personal law in a civilized society. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is suspect.”³³

The need to implement the UCC was recognized by the Supreme Court a long time ago, but certain factors like social, political, economic, and cultural, etc., have paved their way into this very development thus hampering the development and growth of the civilized Indian Society by necessarily creating a connection between the personal laws and the religion.

CONCLUSION

The Uniform Civil Code will be surely a turning point in Indian history since drawing upon the old traditions and then harmonizing those with modern society is what civilization is all about

²⁸ ‘What is Shah Bano Case?’ *The Indian Express* (New Delhi, 23 August 2017) <<https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/>> accessed 03 July 2023

²⁹ *Ibid*

³⁰ *Pannalal Bansilal Patil v State of Andhra Pradesh* (1996) AIR 1023

³¹ Varchaswa Dubey, ‘Uniform Civil Code: Problems and Prospects’ (*iPleaders*, 26 July 2021)

<<https://blog.iplayers.in/uniform-civil-code-problems-prospects/>> accessed 03 July 2023

³² *John Vallamattom & Ors v Union of India* WP (C) 242/1997

³³ *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945

in the present time. The application of the UCC will bring the citizens of different religions under a common umbrella governing them with the same rules they are being differently governed and at the same time this will help to reduce the gender biases in the society and promote national integration. In this way, the aim of one of the most crucial yet enhancing personalities of the constituent assembly Dr. B.R. Ambedkar who is known as the Father of Nation, would be fulfilled which was to promote the gender equality of different genders from different religions. Similarly, the Supreme Court in a number of the judgments pronounced by it has continuously emphasized the need for the implementation of UCC but the very politically tuned step taken up by the Congress Government to overturn the judgment of the Supreme Court because the government believed that personal laws fall under the domain of the religious commune and therefore, the courts have no right to interfere with the same.

Implementing UCC will promote the fundamental rights of women without any discrimination as well as of all those sections where people are disadvantaged in the matters of marriage, divorce, adoption, etc. This will also ensure that future parliamentarians are provided with a way to tackle the issues coming from personal laws and that of its concerned matters.

However, looking at the diversity or the culture of the country the implementation of this step would come with lots of challenges. This step conflicts with the Fundamental Rights and the customary practices of the people of different religions, and perhaps the most crucial yet controversial contention is: Would the government be interfering with the secular structure of the constitution? But if we are to live in a religiously harmonized and uniform country, implementing the Uniform Civil Code is the need of the hour, to prevent any kind of religious conflict that arises on the matter of marriage or adoption etc.