



COMPREHENSIVE EVALUATION OF THE UNIFORM CIVIL CODE

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Abstract

The Uniform Civil Code (UCC), commonly referred to as "One Nation- One Law," is a provision outlined in Article 44 of the Indian Constitution's Directive Principles of State Policy. This article mandates that it is the responsibility of the State to ensure the implementation of a Uniform Civil Code that applies to all people across the nation. It is necessary to consider the implications of this issue from a scholarly perspective. The primary objective is to substitute Personal Laws that are grounded in the scriptures and practises of several prominent groups. In India, there exists a religious community wherein all citizens adhere to a shared set of rules. The topic of personal laws refers to the legal regulations that pertain to individuals and their personal affairs. These laws encompass a wide range. Family law is distinct from public law since it primarily pertains to matters such as marriage, divorce, and inheritance. The topics of adoption and maintenance will be discussed. There exist three primary contextual difficulties that are associated with the concept of uniformity. The three main themes under discussion are legitimacy, majority vs minority, and gender equality. The primary aim of this study is to comprehensively examine the underlying principles and intricacies of the Uniform Civil Code, also referred to as UCC. The present discourse will delve into the inception, current advancements, merits, demerits, and the pivotal function of the judiciary. Therefore, in conclusion, this research has presented a critical examination and reached a conclusion. In the process of composing this work, several scholarly publications, books, and articles were consulted and included. The topic under consideration is being examined. The internet has also played a significant role in facilitating this process. Therefore, this paper is an outcome of the topic of interest is the methodology employed in doctrinal research.

Keywords- Personal laws, State Policy, Marriage, Divorce, Inheritance, Gender Equality

INTRODUCTION

Always the same, The Civil Code is comprised of three very separate ideas. The labels "Civil," "Uniform," and "Code" are given to each of them. These three terms, each have a unique connotation that is quite vivid in its own particular manner. The term "uniform" refers to the state in which all individuals have an identical outward presentation of an object. In spite of the fact that "Common" and "Uniform" are frequently used interchangeably, a more in-depth investigation indicates that these two terms are not identical in a number of essential respects. Concerning the issue at hand, on the other hand, "uniform" refers to the same thing regardless of the circumstances, and "common" refers to the same thing in conditions that are

analogous to the former. Nevertheless, while thinking about these two phrases in the context of Article 44 of the Constitution, it is usual practise to use them interchangeably.

The etymology of the word "civil" may be traced back to the Latin word "civil," which literally means "citizen." In the context of "law," the term "civil" is defined as referring to the personal rights and remedy that are accessible to an individual citizen, in contrast to criminal, political, and other illegal concerns. The word "civil" refers to issues that are concerned with individual people or civil rights, according to the definition provided by the Oxford dictionary. According to the definition that may be found in Black's Law Dictionary, it is "pertaining to private rights and the remedies sought in civil actions, as opposed to criminal proceedings." The inclusion of the word "nature" in the definition has resulted in an even more extensive expansion of its scope. The term "civil law" refers to the body of law that governs private relationships including relationships within families. In addition, it incorporates aspects like remuneration and contracts, in addition to other legal requirements that do not include any punitive penalties. The English word "code" is derived from the Latin word "codex," which means a book or volume.

Pre-Independence and Post-Independence Events

Throughout British-ruled India, progressive factions and women's organisations were at the forefront of numerous movements. With regard to the Hindu community, a succession of legislative measures were implemented that demonstrated benefits for women. The Hindu Succession Act of 1956, the Married Women's Property Act of 1874, and the Hindu Widow Remarriage Act of 1856 are examples.

Constitutional Provisions

India is a secular nation under its constitution, with no state religion. Nevertheless, throughout the years, it has cultivated its own distinct notion of secularism that is fundamentally dissimilar to both the American counterpart, which advocated for a total separation of church and state, and the French ideal of *laïcité*, which characterised religion as "a necessary concession confined entirely to the private sphere and devoid of any function in public life whatsoever."

Notwithstanding the explicit integration of fundamental secular principles into numerous provisions of the Constitution during its initial ratification, the word 'secular' was omitted from the Preamble's brief description of the nation, which it referred to as a 'Sovereign Democratic Republic.' This omission was not coincidental; rather, it was a judicious choice intended to prevent any apprehension regarding India embracing Western concepts of a

secular state. After a span of twenty-five years, during which India's judicial decisions and state practise had solidified its own understanding of secularism, the Constitution (Forty-second Amendment) Act of 1976 amended the Preamble to the Constitution to include the word "secular" in addition to "socialist." This amendment proclaimed India to be a "Sovereign Socialist Secular Democratic Republic."

The Indian Constitution does not provide a definition of religion. Nevertheless, it remains cognizant of the actuality surrounding religions. The Constitution contains several provisions that either affirm the fundamental human right to freedom of conscience and the unrestricted profession, practise, and propagation of religion, or attempt to regulate religious affairs, safeguard individuals from coerced religious instruction or practises, or advocate for social reform in response to undesirable religious practises. Therefore, the Constitution acknowledges and embraces both religious and irrational realities.

Case Laws

In the case of **A. S. Namyana Deekshitulu v. State of Andhra Pradesh**¹, the Supreme Court gave its unwavering opinion that the right to religion as it is protected by Articles 25 or 26 does not include the unrestricted or absolute freedom to propagate a religion that is subject to state legislation that restricts or regulates any economic, financial, political, or secular activity associated with religious practise, faith, belief, or custom. This was the Apex Court's opinion. Because of the legislation that was passed by the state, they are required to go through social welfare changes in line with the law. Even if faith and devotion to a particular doctrine are just as important components of religion as religious ideas and the activities that are performed in observance of those beliefs, this does not in and of itself establish or resolve the problem. Therefore, the goal of the religious freedom that is safeguarded by Articles 25 and 26 is to serve as a guide for the life of the society and to compel all religions to behave themselves in line with the cultural and social needs of their respective faiths in order to maintain an equal social order. Therefore, by striking a balance between the inflexibility of the right to religious belief and faith, as well as its inherent limitations on religious matters, practises, and beliefs, and the freedom of conscience guaranteed to one to commune with his Creator and the cosmos, Articles 25 and 26 make it possible for one to actualize their spiritual self. This is accomplished by ensuring that one has the right to religious belief and faith, as

¹ 1996 AIR 1765

well as its inherent limitations on religious matters, practises, and beliefs. Sometimes religious and secular practises will get intertwined in a way that is difficult to untangle.

In this verdict, in addition to providing definitions for secularism and secularisation, it was concluded that a distinction exists between the two. Fundamentally, secularisation is a process characterised by a decline in religious practise, belief, and thought, as well as an institutional restructuring. While secularism is a political ideology that rigorously prohibits any religion from influencing state policy or how it interacts with citizens, the Constitution of India attempts to reconcile secularism, religious practise, and religious matters. Scepticism consciously condemns all manifestations of supernaturalism, superstitious beliefs, actions, and practises that are not fundamentally and integrally associated with religion, religious practises, or religious belief, by secularising religious matters that are not fundamentally and integrally religious in nature. Put simply, practises that are considered non-religious or anti-religious are diametrically opposed to secularism, which aims to at least partially facilitate the secularisation of religious matters and practises.

Furthermore, this judgement noted that the legitimacy of the genuine categories must be evaluated rigorously in accordance with the rights of the individual and the legitimacy of the state in the pursuit of social advancement, welfare, and reforms, as well as national cohesion and social intensification. Social engineering and a tool for social transformation, the law has developed through a continuous and gradual process.

In **Bal Patil v. Union of India**², a bench of the Supreme Court consisting of the then-Chief Justice of India, R. C. Lahoti, D. M. Dharmadhikari, and P. K. Balasubramanyan J., observed that while ensuring that Minority Commissions fulfil their responsibility towards minorities, the Constitutional purpose must be considered by Central or State Minority Commissions. The activities of commissions established for minorities must be directed towards preserving the unity and integrity of India through the gradual eradication of both the minority and majority classes. A claim to minority status by a segment of Indian society supported solely on the basis of a different religious belief system, numerical weakness, lack of health, wealth, education, power, or social rights would continue to be entertained and conceded in a multireligious and multilingual society like India. A claim made by one group of citizens would provoke another group of citizens to make a similar claim, resulting in strife

² Appeal (civil) 4730 of 1999

and conflict. As a result, caste-based Hindu society is itself fragmented into numerous minority groups. Every caste asserts its distinct identity from the others. Within the caste-ridden society of India, it is impossible for any section or distinct group to assert itself as the majority. Each constitutes a minority within the Hindu faith. A significant proportion of them assert this status on account of their rarity and petition the government for assistance on the pretext that they are lagging behind. An environment characterised by reciprocal dread and mistrust would ensue if each minority group harboured apprehension towards the other, thereby presenting a significant peril to the integrity of our nation. In India, this would plant the germs of multinationalism. Hence, it is imperative that the Minority Commission take action to prevent the incitement of multi-nationalism among diverse segments of the Indian population. Rather than endorsing petitions from various communities to be included in a list of notified minorities as mandated by the Act, the Commission ought to propose strategies and methods to facilitate the establishment of social conditions that lead to a progressive reduction or elimination of the aforementioned list.

The division bench of O. Chinnappa Reddy and M. M. Dutt JJ, in **Bijoe Emmanuel v. State of Kerala**³, deliberated on the matter pertaining to Arts. 19(1)(a), 25(1), and 51A(a). They noted that the right to freely profess, practise, and propagate religion, which is safeguarded by Art. 25, is contingent upon the following conditions: (1) public order, health, and morality; (2) other provisions of Part III of the Constitution; (3) any legislation (a) that regulates or restricts economic, financial, or Therefore, while it is true that Article 25(1) explicitly limits the right it guarantees to public order, health, and morality, as well as the other provisions of Part III, it also grants the State the authority to enact legislation that controls or restricts secular economic, financial, political, or other activities that may be linked to religious practise in order to fund social welfare and reform initiatives, even if doing so has an adverse effect on religious practise itself. Hence, in cases where the Fundamental Right to freedom of religion and to profess, practise, and propagate it is contested, the alleged violation of that right must be scrutinised to determine whether it serves to safeguard public health and order, morality, and health, implement the other provisions of Part III of the Constitution, or is authorised by legislation enacted to regulate or restrict any economic, financial, political, or secular activity. Doing so is both the responsibility and function of the Court. Once more, as stated in relation to Article 19(2) to (6), this requirement is met: the directive in question must

³ 1986 SCR (3) 518

possess the authority of a statute and cannot be a simple executive or departmental order. The tribunal, in summarising the judgement, stated that our constitution, our tradition, and our philosophy all advocate for tolerance; therefore, it is imperative that we do not erode this principle.

The Supreme Court, in the case of **M. Ismail Faruqui v. Union of India**⁴, expressed the firm belief that the Constitution ensures religious equality for all individuals and groups, regardless of their faith, as it is evident from the framework of the Constitution that the State has no official religion. By examining the constitutionality of legislation based on the touchstone of the Constitution, the Preamble of the Constitution, specifically Articles 25 to 28, emphasises this point and indicates that the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people must be understood in this manner. The notion of secularism constitutes an aspect of the right to equality that is intricately interwoven as the primary golden thread within the framework of our Constitution. It is declared in the Preamble to the Constitution of India that the nation is a secular democratic republic. In **Part III** of the Constitution, which outlines fundamental liberties, Article 15 prohibits religious discrimination against citizens by the state. A prominent position is reserved for secularism in the Constitution. The goal is to protect and preserve all religions, and to equalise all religious communities. In such situations, when members of the faith followed by the majority of Indian citizens stake a claim on and attack a place of worship associated with another faith, thereby creating conditions that are conducive to public disorder through their sheer numbers, the State is constitutionally obligated to safeguard that place of worship and maintain public order. To achieve this, the State may employ the necessary means and forces of law enforcement to ensure order.

DEVELOPMENT OF UCC

In 1940, the National Planning Committee, which had been constituted by Congress, argued for the formation of a uniform civil code (UCC), which is when the idea of a uniform civil code (UCC) entered the national political discourse for the first time. The 'Women's Role in a Planning Economy' subcommittee's mission was to investigate the various roles that women may play in an independent India in the years to come. The report of the committee's conclusions was sent to the National Planning Committee in August of 1940. The research

⁴ AIR 1995 SC 605 A

suggested that a UCC should be put into action. The planned Uniform Civil Code (UCC) was supposed to be discretionary when it was first conceived, with the possibility of gradually supplanting the diverse personal laws that are observed by various faith communities. This was the original objective. In spite of objections from one Muslim member of the National Planning Committee to the idea of a UCC, this suggestion was ultimately supported by the committee. On the other hand, several resolutions that were approved by the National Planning Committee and the subcommittee revealed that its members did not regard the implementation of a UCC to be a feasible prospect. A small group of leaders from the All India Women's Conference called for the creation of a UCC by the year 1940. However, despite the fact that the Charter of Women's Rights from the All India Women's Conference acknowledged women's claim to revisions in personal laws, it did not widen this entitlement to include UCC.

There was no provision in either the Government of India Act of 1915 or the Government of India Act of 1935 that would have prevented the government from modifying or standardising the personal laws that persons of different religions adhere to. In point of fact, it was clear from these legislation that none of the personal laws were exempt from the legislative scope of this body. This suggests that the personal laws were open to change and amendment at any time in the future. The historical progression of the UCC is inextricably linked to the development of personal laws in a variety of ways. Tradition and religious dogma were the primary sources of authority for the development of civil, criminal, and commercial law throughout antiquity and the middle ages. This judicial system, which was influenced by religious customs and traditions, was complicated and outmoded. The British colonisers of India made efforts to set up a legal system that was both progressive and rigorous throughout their time there. A gradual process of standardisation and the introduction of secular criminal and procedural legislation was carried out by British colonial authority. They chose not to develop a personal and marital code and instead refrained from creating a civil code that was all-encompassing and secular. In this particular instance, the British government instituted a policy of non-interference in subjects that had traditionally been linked with religious practises. Nevertheless, they did not want to completely sidestep the issue of civil law in the course of carrying out their plan to change the legal system. An investigation of the state of the law in British India prior to the passage of the Government of India Act in 1915 found that the government did not have the jurisdiction to establish legislation in areas that had traditionally been subject to personal laws. This was the situation

in the years before the act was passed. The Act of 1915 brought all personal laws under its jurisdiction, and subsequent constitutional revisions did not result in any changes to the existing condition of affairs. The terms of legislation that were described in the Government of India Act, 1935 addressed the great majority of issues that were previously regulated by personal laws. This was the case since the act was passed in 1935. The history of India's constitutional development reveals that the British authorities were not in support of a thorough codification of personal laws in order to avoid offending the religious sensitivities of Indian society. This is something that can be deduced from India's constitutional history. Their concern for maintaining their political authority took precedence over their interest in making social improvements. As a result, there were no efforts made in British India to develop a secular civil code; instead, gradual changes were undertaken through the legislative branch in order to assuage the loud complaints of progressive portions of Indian society. This was done in an effort to appease the vocal objections of progressive segments of Indian society.

PROBLEMS RESULTING FROM A LACK OF UCC:

The Indian policy of "Different Personal Law for Different Religion People" has garnered international criticism from numerous nations and eminent legal scholars. Due to the system's lack of success, a number of significant socio-legal-political issues have emerged. In India, the personal law system has failed to ensure that every citizen receives equal justice. On numerous occasions, individuals of various faiths are observed exploiting the laws of other religions. It has also resulted in profound interreligious injustice.

1. Misapplication of Personal Laws: There have been numerous occurrences in which males from non-Muslim communities have converted to Islam for the sole purpose of obtaining another marriage. This is because, contrary to an interpretation of a Quranic verse, Muslims are permitted to marry up to four spouses in India, according to Muslim law. Applying such practises results in the abuse of the legal system. The landmark judgement in this regard is the verdict rendered by the Supreme Court of India in the case of **Sarla Mudgal President, Kalyani v. Union of India**⁵.

2. Inter-religious Variations: Distinct personal laws are not exclusive to one religion but exhibit numerous inter-religious variations as well. These variations are contingent upon numerous factors, including geographical region, regional customs and usages, religious

⁵ 1995 AIR 1531

affiliation (e.g., sub-caste, sect, group), and more. As a result, even for members of the same religion, no straight jacket formula is suitable.

3. **Lack of Precedent:** As a result of diverse usages and customs, and in the absence of a unified policy, individuals are able to exploit loopholes in the laws. The veracity of such an act cannot be contested, and if it is, the affected party must appeal to the Supreme Court of India for a ruling in the absence of any precedent in that field.

4. **Legal Technicalities:** Due to the lack of uniformity in personal laws, it is exceedingly difficult for the general public to comprehend legal technicalities. Due to the complex nature of the legal system, complete knowledge of all provisions is unattainable, giving rise to a number of socio-legal complications. It is possible for both parties involved in a dispute to be sincere, but they may nonetheless commit a legal error. That ultimately results in complications.

5. **Gender Disparity:** Diverse personal legislation has contributed to significant gender inequality within society. They have a number of problems that have not only led to inequity between men and women, but also to hostility between women and between men and women.

6. **Inequality before the Law:** Numerous personal laws perpetuate gender inequality with regard to matrimonial, divorce, and succession matters, with males being granted a greater portion. Further inequality is generated among members of distinct communities. In addition, it is formed between the state and every individual who resides within it. The state's obligation to secure maintenance for an indigent divorced woman from her husband will presently be contingent upon the spouse's religious affiliation. Whether the spouse is exempt from such a government claim will also be contingent on his religious affiliation. Put simply, the state will owe certain citizens obligations while not owing others obligations for the same act.

CONCLUSION

The implementation of Uniform Civil Code is a challenging process but is not impossible. Dr. B.R. Ambedkar's Council propounded a middle path which stated that it is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.

The implementation of UCC will ensure the elimination of discrimination based on sex, creed, religion, and caste. With the enactment of UCC, women's empowerment can be ensured. UCC will help in establishing a secular Indian society, with its enactment, the

elimination of certain discriminatory laws in every personal law of every religion can be ensured. UCC will help to wipe out the complexity involved in various laws but the Uniform Civil Code has its challenges. UCC is witnessing certain challenges while implementing the law. Tax application for Hindu Undivided families is the biggest question that legislatures need to answer before implementing UCC. The country's various tribal laws, and customary laws of various religions, are creating a challenge for the implementation of UCC. A misconception among minorities in this country that UCC will hinder their religious beliefs and laws has become a big challenge for the parliament to enact UCC. Article 25 which gives freedom of religion also somehow became like a fork in the path of implementing the UCC. Hence parliament needs to ensure that the stakeholders involved in this matter are consistent with the parliament while implementing the UCC across the country.

REFERENCES

- [1] *Constituent Assembly Debates, Vol. VIII, (1949)*
- [2] *Constituent Assembly Debates, Vol. VII, (1949)*
- [3] Chagla, M.C. *Plea for Uniform Civil Code, Weekly Round Table, March 25, 1973*
- [4] *United Nations, report of the Committee on the Elimination of Discrimination against Women, Supp. No.38.*
- [5] Destha Kiran, *Uniform Civil Code In Retrospect And Prospect 2 (Deep & Deep Publication New Delhi 2002) (1995).*
- [6] Jain M.P., *Indian Constitution Law 904 (5th Ed., Wadhwa And Company Nagpur New Delhi 2008) (196)*
- [7] Kumar Virendar, *Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas (2000)] 42 Journal of Indian Law Institute 315 (2000).*
- [8] Agnes, Flavia. "The Supreme Court, the Media, and the Uniform Civil Code Debate in India." *The Crisis of Secularism in India*, 2006, pp. 294–315.
- [9] Chavan, Nandini, and Qutub Jehan Kidwai. *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code. Hope India Publications, 2006.*
- [10] Dhagamwar, Vasudha, and Indian Law Institute. *Towards the Uniform Civil Code. 1989.*
- [11] Kumar, Ajai. *Uniform Civil Code: Challenges and Constraints. 2012.*
- [12] Parashar, Archana. *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality. 1992.*
- [13] Ratnaparkhi, M. S. *Uniform Civil Code: An Ignored Constitutional Imperative. Atlantic Publishers & Dist, 1997.*
- [14] Shetreet, Shimon, and Hiram E. Chodosh. *Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse. Oxford University Press, 2015.*
- [15] Choudhary, Vaibhav. "A Proposal for Uniform Civil Code for Law of Succession in India." *SSRN Electronic Journal*, 2010.
- [16] Hazarika, Raya. "Should India Have a Uniform Civil Code?" *SSRN Electronic Journal*, 2010.
- [17] Sharma, ShardaGirijesh. "Uniform Civil Code and Adoption Laws in India." *SSRN Electronic Journal*, 2008.
- [18] Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes" *IRJMST, March 2018.*
- [19] Trishala A , Lakshmi T and Rajeshkumar S, " Physicochemical profile of Acacia catechu bark extract –An In vitro study" *IRJMST, April 2018.*