



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 8.4
IJAR 2021; 7(8): 301-304
www.allresearchjournal.com
Received: 14-06-2021
Accepted: 17-07-2021

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A comprehensive study on pros and cons in implementation of uniform civil code

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DOI: <https://doi.org/10.22271/allresearch.2021.v7.i8d.8877>

Abstract

This article approaches in examining the implementation and issues of Uniform Civil Code. In India, the Uniform Civil Code marks to outlaw the personal laws in order to reform the social system, in the sense, of having, one set of uniform personal laws irrespective of caste, creed and community in dealing with personal matters like marriage, maintenance, adoption, inheritance, divorce and right to property, to all citizens. The constitution of India provides for provision for Uniform Civil Code so as to provide common civil and personal laws for its citizens irrespective of their religion, class, caste, gender etc. Accordingly, the paper focuses on the Constitutional Provision of uniform civil code. The paper highlights on how and when the incorporation of the Uniform Civil Code was made in the Constitution. The paper further emphasizes the need for uniform civil code in India. The judiciary has reiterated in most of the cases for the implementation of uniform civil code. In this context, the article aims in contributing towards the advantages and disadvantages of implementing the Uniform Civil Code in constitutional perspective.

Keywords: the constitution, uniform civil code, personal laws, fundamental rights, religion, judiciary

1. Introduction

The citizens having a wide-ranging culture with the mixture of religions in India have a set of laws for governing them especially in matters relating to marriage, divorce, inheritance, adoption, etc. However, matters such as the transfer of property, negotiable instruments, contracts, easements and sales of goods are all uniform in nature and followed equally by every citizen. The seed Uniform Civil Code was never sown earlier either in the Objective Resolution or in the draft of Part A which then so called as the fundamental principles of State policy. During drafting of the Constitution, the concept of the Uniform Civil Code was introduced for the first time on 30th March 1947. The Constitutional Advisor Mr. B.N. Rau prepared a draft of the directive principles and as the item 6, the provision for the Uniform Civil Code was incorporated (Dr. M.P. Raju, Uniform Civil Code: A Mirage?, Part I, Chapter 1).

Dr. B.R. Ambedkar, during Constituent Assembly debates, demonstrated his will to reform the Indian society by recommending the adoption of a Uniform Civil Code. Nevertheless Ambedkar said that, "there was nothing new about the Uniform Civil Code; there already existed a common civil code in the country except for the areas of marriage, inheritance - which are the main targets for the Uniform Civil Code in the Draft Constitution." However, Ambedkar also felt that the Uniform Civil Code should be optional. Remarkably, Ambedkar argued that the absence of a Uniform Civil Code would hinder the government's attempts at social reforms.

The Uniform Civil Code aims to provide protection to vulnerable sections as foreseen by Dr. B.R. Ambedkar including women and minorities. When enacted, the code will simplify the complex laws that are surrounded with marriage ceremonies, inheritance, succession, adoptions. The civil law will then be applicable to all citizens irrespective of their religion. Although, the substance of a Uniform Civil Code is consistent with the principles of equality, fairness and justice, there are many controversies in implementing uniform civil code in India which holds with diverse culture and religion.

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2. Constitutional provision on uniform civil code

The Constitution of India under Article 44 (draft Article 35) in Part IV of the Constitution of India deals with Directive Principles of State Policy which provides that:

“The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”

Article 44 of the constitution is a guideline to the Government to implement Uniform Civil Code for all citizens of the country.

3. Need for an implementation of uniform civil code

A uniform civil code is of an absolute necessity for the citizens of diverse religions. It is imperative for the furtherance of national unity and solidarity. The principle behind implementing a uniform civil code is to treat every citizen equally fair and just. It would enable to put an end to gender discrimination on religious grounds, strengthen the secular fabric and also promote unity.

Existing personal laws are mainly based on the upper-class patriarchal notions of the society in all religions. The demand of UCC is normally made by aggrieved women as a substitute for existing personal laws as patriarchal orthodox people still deem the reforms in personal laws will destroy their sanctity and oppose it profusely.

It is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par. With the implementation of Uniform Civil Code, all citizens will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

The need for a Uniform Civil Code can be understood by various case laws.

In *State of Bombay v. Narasu Appa Mali* (AIR 1952 BOM 84), the need for uniform civil code was urged by the Court. In this case, the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 was challenged. The Act violates Article 14, Article 15 and Article 25 of the Indian constitution as it prohibited Hindus to practice Bigamy. On the other hand, Muslims had the liberty to marry more than one time as per their personal law. This created discrimination on the part of Hindus. Hence, to remove such ambiguity, the court exhorted a need for the Uniform Civil Code.

In *Shah Bano's case (Mohammed Ahmed Khan v. Shah Bano)*, AIR 1985 SC 945), the issue of uniform civil code was raised before the court of law. The Supreme Court brought within the cover of section 125 of the Code of Criminal Procedure a divorced Muslim woman. It observed that a Muslim women was entitled to maintenance even after her iddat time had ended. The court stressed the need for the implementation of uniform civil code to manage the stress of women and remove the ambiguity.

Again in *Sarla Mudgal v. Union of India* (AIR 1995 SC 1531), the issue was whether a Hindu husband, married under the Hindu constitution, would solemnize second marriage by adopting Islam. The Supreme Court ruled that it was a violation of personal rules to follow Islam for a second marriage. Moreover, Hindu marriage can be broken in compliance with the Hindu Marriage Act of 1955, i.e. merely by converting to Islam and marrying again does not

dissolve the marriage. The Supreme Court in compliance with Article 44 reiterated the State for implementation of uniform civil code.

The Supreme Court in *Shayara Bano v. Union of India* (Writ Petition (C) No. 118 of 2016), pronounced a milestone judgment on the constitutional validity of “Talaq-e-Biddat” popularly known as “Triple Talaq” by declaring that the practice was unconstitutional. Justice Kurian Joseph, in his concurring opinion, observed that triple talaq is against the Quran, and thus lack legal sanction. He wrote, “what is held to be bad in the holy Quran cannot be good in Shariat and, what is bad in theology is bad in law as well”. The court directed the Parliament to take legislative measures against the practice.

On 30th July 2019, the Parliament of India declared the practice of ‘triple talaq’ as illegal, unconstitutional and made it punishable act from 1st August 2019 which is deemed to be in effect from 19th September 2018 (Anima Yadav, Law Bhoomi, June 3, 2020) [3].

Again in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira and Another*, (2019) 20 SCC 85, the Supreme Court observed that:

“No attempt has been made yet to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations by it... Centre must stop dishing out excuses for not framing uniform civil code in light of this latest, landmark and extremely laudable judgment and promptly act in this direction so that no one feels that just one community or religion is getting special privileges at the cost of the other.”

In *Satprakash Meena v. Alka Meena* (C.R.P.1/2021 and CM APPL. 332/2021, a bench of Justice Prathiba M. Singh observed that:

"Indian society becoming homogeneous, disappearing 'traditional barriers' of religion, community, and caste, and in view of these changing paradigms, a uniform civil code is in order.”

Accordingly, the Delhi High Court backed the Uniform Civil Code in India and asked the Centre to take the necessary action further in order that the Indian youth need not be forced to struggle with issues arising due to conflicts in various personal laws in relation to marriage and divorce.

4. Pros of uniform civil code

a. To provide equal status to all its citizens

By implementing UCC we can implement many modern laws that couldn't be forced till now due to various religions and their beliefs. If all the citizens of the country are treated equally and have to follow the same rules then it wouldn't let politicians use religion as a weapon during elections (which they do) and will eventually reduce 'Vote Bank Politics'.

b. Promote gender parity

Some of the personal laws do not follow gender equality and are discriminatory to women. Uniform Civil Code (UCC) can solve this problem.

c. Bring social change

The Uniform Civil Code is a social change. In the Indian sense, for example, Muslim women are denied personal laws about marriage, divorce, etc. On the contrary, women from various Muslim nations like Pakistan, Bangladesh, Turkey, and Morocco enjoy codified personal rules. So a codified personal law will also prevail after the implementation of UCC for Indian

women especially Muslims and Christians. This would be a stepping stone towards another country-wide social change.

d. To support the national integration

Bringing a Uniform Civil Code would help to integrate the nation because India has diverse cultural values, customs, and practices. We need a unified law that is irrespective of gender, creed, caste or religion to boost the unity of the nation. This is also an advantage of UCC.

e. Bypass the issue of reform of existing personal laws

Article 44 helps in maintaining gender equality in the nation and abolish gender discrimination; for example, there are various laws related to inheritance, marriage, and adoption which are male-dominated. Taking another example in which a Muslim man can marry more than one time. Whereas the Hindu cannot. So there should be a common law regulating that the marriage can only be one. It is one of the advantages of UCC.

5. Cons of uniform civil code

a. Practical difficulties due to diversity in India

It is practically tough to come up with a common and uniform set of rules for personal issues like marriage due to tremendous cultural diversity India across the religions, sects, castes, states etc. In a diverse country like India, homogenization may not be suitable and may threaten the continuity of distinct cultures.

At the instance, the citizenship bill has created chaos in the country where Hindu-Muslim issues have created concerns. Hence, this is not the right time to implement the UCC. It would just lead to more chaos and fights in the nation.

b. Violation of Fundamental Rights

If a certain set of rules or laws are implied on the people that breach their own religious laws. It would be against the Fundamental Right of Freedom from the Constitution of India. Even at the time of submitting the report by the committee members of the Constituent Assembly, the debate was that though Uniform Civil Code was needed for a strong consolidated nation, it hindered the fundamental rights guaranteed by the Constitution that adherence to one's own personal law. Hence, a Uniform Civil Code would be in contravention of that right. They also recommended that though the Uniform Civil Code was highly desirable, its application should be made entirely on voluntary basis. (M.S. Rathnaparkhi, Uniform Civil Code-An Ignored Constitutional Imperative, Chapter II)

c. Perception of uniform civil code as an encroachment on religious freedom

Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom. They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

d. Important issue on Secularism

Uniform Civil Code is a threat to the religious rights guaranteed by the Constitution under Article 25. The right to practice religion becomes a controversial issue on the implementation of uniform civil code. Article 44 is mainly to replace individual personal customs and

practices of marriage, divorce, adoption, and succession with a common code. The debate goes to violation of the fundamental right to practice religion given under Article 25 of the Constitution. Article 25-28 states freedom of faith, religious practice, holding religious meetings, administrating and building religious institution and propagation of religion. The UCC can't, however, be forcibly enforced on the citizens because it would then be obviously a breach of Article 25 of the Indian Constitution. UCC and Moral/personal Rules have to coexist. Likewise, UCC is nothing but integrating new and progressive elements into all current personal rules which shouldn't be ignored.

e. It is a finely tuned task to implement

Such a code, in its true spirit, must be brought about by borrowing freely from different personal laws, making gradual changes in each, issuing judicial pronouncements assuring gender equality, and adopting expansive interpretations on marriage, maintenance, adoption, and succession by acknowledging the benefits that one community secures from the others. This task will be very demanding time and human resource wise. The government should be sensitive and unbiased at each step while dealing with the majority and minority communities. Otherwise, it might turn out to be more disastrous in a form of communal violence.

6. Uniform civil code in Goa

Goa is the only Indian State to have a Uniform Civil Code. The Goa Civil Code which is also known as Goa Family Law is a uniform civil law for the residents of Goa. It has many exceptions to itself that makes it not a uniform code in the actual sense. For instance, although equal property rights for both sons and daughters are specified in the main provisions of the Code and parents are not entitled to disinherit their children entirely. Half of the property is the minimum requirement that is to be passed on to the children, there are inequality in the adoption and the rights of illegitimate children are also unequal as compared to legitimate children. Similarly, Catholic Christians can solemnize their marriage in the Church after taking permission at the office of Civil Registrar, but non-Catholics can only register their marriage at the office of Civil Registrar. Again, there are exceptions to the practice of monogamy for only Hindus and other communities are not permitted to practice it (Rachit Garg, ipleaders).

7. Conclusion

Uniform Civil Code can only emerge through an evolutionary process since major sensitization efforts are needed to reform existing personal law reforms which should first be initiated by the communities themselves. The institutions must be strengthened for this change. Efforts should also be focused on harmony in plurality than blanket uniformity for flourishing Indian democracy.

No doubt, the implementation of uniform civil code makes a country unified and secular but the biggest challenge recites with hindering the fundamental rights of a person in practicing their religious functions. The implementation of UCC, on one side, promotes in fighting the discrimination and harmonizing different cultural practices; on the other side, all citizens upholds their personal laws to prevail. Dr. B R Ambedkar, while drafting the Constitution had opined that a UCC is desirable but for the moment it should remain

voluntary. It was incorporated in the Constitution as an aspect that would be fulfilled only when the nation would be likely to accept it and the social acceptance to the uniform civil code could be made. Nevertheless, a uniform law will prevail the message of equality but at the same time it might endanger the fraternity of the nation.

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