

Legal Connections Of Concording Personal Laws Through One Nation One Law

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Abstract:

Constitution of India is the law of the land. Legal sovereignty lies with the Constitution of India. It consists of 22 parts, 12 schedules and 500 articles, out of which, Part III deals with fundamental rights of the citizens as well as non-citizens of India. Whereas, Part IV of the Constitution deals with Directive Principles of State Policy. It is enshrined in Directive Principles of State Policy that it is the duty of the State to formulate social, economic and cultural welfare policies in the interest of society. The same however stands unenforceable in the courts of law. India, a State of multi-lingual practice enormous culture, religious activity, customs from ancient periods. To ensure that the diversity and secularism is cherished and protected, laws have been legislated, differently for religions in their personal spheres which includes marriage, inheritance, adoptions, guardianship and many more. One such provision which mentions and has fought legal battles throughout the ages, stands Article 44, which makes the State obligated to enforce Uniform Civil Code, which advocated of a common law for all persons, irrespective of their religious beliefs. The Uniform Civil Code, aims to incorporate a common law for all persons, without causing any hindrance to the personal spheres of an individual, specifically incorporated under Right to Religion, under Article 25 to Article 28 of the Constitution of India. The Researcher in the present paper has used secondary method of research and has tried to reflect the benefits, repercussions and legality of the Uniform Civil Code, if implemented.

Keywords: Constitution of India, Gender, Religion, Secularism, Uniform Civil Code.

Introduction

The prevailing societal inequalities, whether between genders or individuals of diverse religious affiliations, have underscored the urgency of implementing a Uniform Civil Code (UCC) in India to safeguard the rights of all citizens. Article 44 of the Indian Constitution emphasizes the need to establish a uniform civil code throughout the nation. The UCC is the crucial requirement for standardization in personal laws, such as those governing Hindu or Muslim practices, covering areas like marriage, divorce, custody, adoption, inheritance etc.

The delay in adopting a UCC, despite the explicit mandate in Article 44, is attributed to its classification under the "Directive Principles of State Policy." Consequently, the push for implementing a Uniform Civil Code, as outlined by the Indian Constitution, is presented as an aspirational objective rather than a fundamental right or a constitutional guarantee.

Directive Principles are defined in Article 37, which lays down: "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."³

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³ Article 37, The Constitution of India

As was laid down in the Shah Bano Case by the apex court, “There is no evidence of any official activity for framing a common civil code for the country. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.”⁴ In this context, the introduction of a uniform personal law formula is proposed, presenting uniformity as a remedy to rectify the oppressive shortcomings embedded in our current personal laws. The Indian Supreme Court consistently emphasizes to the legislature the lofty commitment to a uniform civil law, a promise deferred to the future by the framers of our Constitution. The crux of the Uniform Civil Code centers on the principle of secularism, prompting a need for thorough examination. Secularism, with its varied interpretations, becomes the stage upon which the UCC is both praised and criticized. Some segments of society view the UCC as conflicting with secular ideals, while others see it as a catalyst for fostering communal harmony and upholding secular values.

Historical Background

The British Government established the 'Second Law Commission' in 1835, which, in its report, emphasized the pressing need for the implementation of a Uniform Civil Code. The report underscored the necessity for uniformity in codifying various Indian laws related to crimes, evidence, contracts, and more. However, it specifically recommended that the personal laws of Hindus and Muslims should be excluded from such codification.

"In their Second Report the Commission examined the problems of Lex Loci and codification and came to the conclusion that 'what India wants is a body of substantive civil law, in preparing which the law of England should be used as the basis, but which, once enacted, should be the law of India on the subject it embraced. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and character, religions, usages of the population, would, we are convinced, be of great importance to that country.' The Commission also recommended that codification should not extend to matters like the personal laws of the Hindus and Mohammedans which derived their authority from their respective religions."⁵

The underlying aim of the decision emanating from the aforementioned 1835 Report was to effectuate a distinct segregation among the diverse personal laws governing different religions and communities in India, explicitly excluding them from the envisioned codification.

Furthermore, in 1858, during the epoch of 'Queen Victoria's Proclamation,' a pivotal moment marked by the transfer of sovereign authority from the East India Company following the 1857 revolt, the British government committed to an unequivocal policy of absolute 'non-interference' in all facets of religious affairs within the Indian subcontinent.

The domain designated as the public sphere, under the jurisdiction of British and Anglo-Indian legal frameworks, encompasses multifarious facets including crime, land relations, contract laws, and evidence laws. These legal stipulations are crafted to exert a uniform influence across the citizenry, transcending religious distinctions. Conversely, the personal laws of individuals delineate regulations governing intricate matters such as inheritance, succession, marriage, and religious ceremonies. These regulations are contingent upon one's religious beliefs or community practices, thus introducing a nuanced complexity into the legal landscape.

⁴ Mohammad Ahmed Khan vs. Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844

⁵ Law Commission of India. 1958. Fourteenth Report (Reform of Judicial Administration), Ministry of Law, Government of India, September 26, Vol. 1. <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>

Nexus Between Uniform Civil Code & Constitution

The Constitution, particularly in Part III, has instituted robust safeguards to ensure the protection of individual rights for all citizens, irrespective of differences in caste, creed, race, sex, place of birth, or religion. These provisions prohibit the state from enacting laws that might foster discrimination based on any of the aforementioned grounds. The foundational tenet of secularism in India underscores the state's obligation to extend equal respect to all religions.

This principle also grants each religion the autonomy to formulate its own personal laws, insulated from undue judicial intervention. Articles 25 to 28 of our Constitution have enshrined the principle of providing religious freedom to all citizens, allowing for the incorporation of personal laws aligned with specific religions and cultures. However, the implementation of personal laws in India has consistently clashed with other fundamental rights outlined in Articles 14-15 and Article 21 of the Constitution, ostensibly under the umbrella of freedom of religion.

Most personal laws conspicuously exhibit discriminatory practices against other communities and, in one way or another, encroach upon fundamental rights. Upon closer examination of Articles 14, 15, and 21 of our Constitution, it becomes evident that they serve as a vigilant safeguard against inequality, inhuman treatment, discrimination, and the violation of other basic rights on any discriminatory basis.

Part IV, Article 44 of the Constitution of India stipulates that, "The State shall endeavor to secure for the citizen a Uniform Civil Code (UCC) throughout the territory of India." ⁶ However, it is explicitly stated in the Constitution, in Article 37, that the Directive Principles of State Policy (DPSP) "shall not be enforceable by any court."⁷ Nevertheless, the Constitution also emphasizes that DPSP holds a fundamental role in the governance of the country.

Personal Laws Status In India

In contemporary society, a complex arrangement has emerged where Hindus, Muslims, Parsees, and Christians adhere to distinct personal laws that govern civil matters such as marriage, divorce, adoption, inheritance of property, succession, and maintenance. While variations may exist in other aspects, the divergence in laws becomes particularly pronounced in the realms of marriage and divorce, where virtually every religious community in India adheres to its own set of personal laws. Despite coexisting as citizens of one nation, individuals from different religious communities find themselves subject to disparate legal frameworks governing their civil and family matters. Consequently, the societal norms dictated by their respective religions, regardless of how antiquated or discriminatory they may be, are unquestioningly followed. Different religions follow different set of laws, as enumerated below:

- a. The Indian Christian Marriage Act of 1872 (applicable throughout India);
- b. Muslim Personal Law (Shariat) Application Act, 1937 (Application to Indian Muslims);
- c. To govern Sikh marriages, the Anand Marriage Act, 1909;
- d. Hindu Marriage Act, 1955 (applicable on Hindus, Buddhists and Jains and also to any person other than a Muslim, Christian, Parsi or Jew, and who is not governed by any other law).
- f. The Parsi Marriage and Divorce Act, 1937.

Apart from this, Article 13(1) of the Indian Constitution declares that any laws existing in the territory of India before the commencement of the Constitution, which are in conflict with the provisions of this section, will be considered void to the extent of such inconsistency.

Comprehending the clash between Personal Laws and the Constitution of India hinges on two crucial scenarios:

⁶ The Constitution of India.

⁷ The Constitution of India.

Customary Nature of Personal Laws and its Clash with Part III: The conflict emerges from the traditional nature of Personal Laws, leading to a contradiction with Part III of the Indian Constitution. **Unconstitutionality Arising from the Reform of Personal Laws, Particularly with Article 25:** A perceived breach of constitutionality surfaces in the conflict related to the reform of Personal Laws, notably concerning Article 25 of the Constitution of India. A profound understanding of this conflict and its intricacies is revealed in the landmark judgment of the Narasu Appa Mali Case. This case, revolving around the Bombay Prohibition of Bigamous Marriage Act, 1946, saw the act's validity challenged based on Article 14, 15, and 25 of the Indian Constitution. The court's decision brought forth several pivotal points:

a. **Exclusion of Personal Laws from Article 13 (3) and Art. 372(3):** The court clarified that Personal laws fall outside the purview of the term "law" in Article 13(3) and do not align with the definition of "law in force" as referred to in Art. 372(3).

b. **Non-violation of Article 14 by Bombay Prevention of Hindu Bigamous Marriage Act, 1946:** The court concluded that the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 did not transgress Article 14. It affirmed the State's discretion in introducing social reforms gradually.

c. **Primacy of Public Order, Morality, or Social Welfare over Religious Practices:** The court underscored that if religious practices clashed with public order, morality, or the policy of social welfare, it was incumbent upon the State to prioritize the welfare of the people over religious practices.

This seminal case provides insight into the nuanced interplay between Personal Laws and the Constitution, addressing concerns of validity, constitutional principles, and the State's role in orchestrating social reforms.⁸

Impediments To Uniform Civil Code

India, renowned for its immense diversity, faces a significant challenge in formulating laws that are both comprehensive and uniform, satisfying the varied needs of its populace. The task is not only about achieving unanimous consensus but also entails grappling with the complexities of drafting.

The country is characterized not only by diverse religions but also by numerous communities, particularly minority groups, which express apprehension about the implementation of a Uniform Civil Code. For them, such implementation poses a potential threat to their rights concerning religious freedom.

Issues relating to personal matters like marriage, divorce, and inheritance are preferred by a substantial portion of the population to be left untouched by state interference. This sentiment is rooted in the constitutional provision safeguarding the right to freedom of religion, which individuals believe should not be subject to interference. The implementation of a uniform code is viewed as imposing standardized rules, potentially limiting the exercise of one's freedom of religion.

Introducing a Uniform Civil Code is undoubtedly a sensitive and formidable task, but it is not an insurmountable challenge. The intricacies surrounding religious rights, community sentiments, and individual freedoms make it a complex endeavor that requires careful consideration and inclusive dialogue.

Implications Of Uniform Civil Code

The implementation of a Uniform Civil Code in India is motivated by several fundamental objectives:

a. **Ensuring Equal Status and Non-Discrimination:** The primary goal is to provide equal status and eliminate discrimination among all citizens, transcending differences in religion, class, caste, gender, color, or creed.

⁸ Solanki S. and S. Manaktala, "Uniform Civil Code and Conflict of Personal Laws" 3 International Journal of Law 9 (2017).

b. Promoting Gender Equality: The implementation of a uniform civil code is seen as a means to promote gender equality, ensuring that both men and women are treated on equal footing in matters governed by personal laws.

c. Harnessing the Potential of Youth for Nation-Building: The code aims to accommodate and fully utilize the potential of the emerging youth in the country, fostering an environment conducive to their aspirations and contributions to nation-building.

d. Ensuring Equality Before the Law: The implementation of a Uniform Civil Code seeks to place all Indian citizens on an equal footing before the court of law. While criminal and civil laws in India provide equality in the courts, personal laws currently lag behind, and a uniform civil code is envisioned to rectify this disparity.

e. Bringing Uniformity and Codification in Personal Laws: The code aims to introduce uniformity and codification in laws pertaining to personal matters, including inheritance, divorce, and marriage. This move seeks to streamline and standardize these aspects of personal laws, bringing clarity and consistency.

Overall, the adoption of a Uniform Civil Code is envisioned as a transformative step towards creating a more egalitarian, inclusive, and just legal framework in India.

Judicial Interpretations

The Supreme Court of India has consistently advocated for the implementation of the Uniform Civil Code. The watershed moment that brought the UCC issue to the forefront was the historic case of *Mohd. Ahmed Khan v. Shah Bano*⁹ (referred to as the Shah Bano case). In this widely celebrated case, the Supreme Court extended the coverage of Section 125 of the Code of Criminal Procedure, 1973 to a divorced Muslim woman, affirming her right to maintenance even after the completion of her iddat period.

While the Supreme Court had previously assumed the role of a social reformer in various cases, the Shah Bano case held a unique and pivotal position in the ongoing discourse about religion, secularism, and women's rights. Despite the subsequent political developments and controversies surrounding the case, a closer examination allows us to discern the challenges that the courts in our country face due to the existence of separate and conflicting personal laws. The Shah Bano case underscored the complexities arising from the coexistence of divergent personal laws, adding depth to the ongoing debates on religion, secularism, and the rights of women in the legal landscape of India.

The Shah Bano case serves as a poignant reminder of the imperative for a uniform law that addresses the fundamental needs of women facing distress. It emphasizes that the focal point of any gender justice law should be the plight of the woman. Specifically, the case underscores the issue of a husband refusing to provide maintenance to his wife after conveniently granting her a divorce. The argument here is that the law should prioritize addressing the challenges faced by the woman rather than adhering strictly to the religious dictates prescribed for her within a particular faith. This perspective seeks to advocate for a legal framework that prioritizes the well-being and rights of women in situations of marital distress, regardless of religious considerations.

The case of *Smt. Sarla Mudgal Vs. Union of India* is another significant instance where the Supreme Court, in its judgment, underscored the importance of implementing a Uniform Civil Code in the country. The central issue addressed in this case revolved around whether a Hindu husband, married under the Hindu Marriage Act, 1955, could enter into a second marriage with another woman by both converting to Islam, without divorcing his first wife who continued to adhere to Hinduism. The court ruled that such a subsequent marriage would be deemed invalid, asserting that converting to Islam merely for the purpose of solemnizing a second marriage constitutes an abuse of personal laws. The

⁹ *Mohd. Ahmed Khan v. Shah Bano*, AIR 1985 SC 945,

court held that such a marriage would not be considered legally valid and would also be deemed an offense under Section 494 of the Indian Penal Code. This ruling not only addressed the specific case at hand but also emphasized the need for a more uniform and consistent legal framework to govern such complex and sensitive issues involving personal laws.¹⁰

The case of John Vallamattom and Another vs. Union of India exemplifies the significance of having a Uniform Civil Code in the country. This writ petition case, initiated by John, contended that Section 118 of the Indian Succession Act exhibited bias against Christians, as it placed restrictions on the donation of property for charitable and religious purposes through a will.¹¹

This legal outcome not only addressed the specific issue raised by the petitioner but also underscored the broader need for a more uniform and equitable legal framework that transcends religious distinctions. The case served as an illustration of the challenges arising from diverse personal laws and highlighted the importance of a comprehensive and consistent legal code to address such issues impartially.

In the case of Danial Latifi & Anr v. Union Of India, the Muslim Women's Act (MWA) came under challenge on the grounds that it violated Article 14 and Article 15 of the Indian Constitution, which assert the Right to Equality, and Article 21, which guarantees the Right to Life. The Supreme Court, after a thorough analysis of the case's facts, deemed the law to be constitutional. The court harmonized the Muslim Women's Act with Section 125 of the Criminal Procedure Code, asserting that the amount received by a wife during her iddat should be considered. Consequently, the court established that, under the laws of the land, a divorced Muslim woman is entitled to the provision of maintenance for her lifetime or until she remarries. This ruling represented a legal interpretation that sought to balance the rights and entitlements of divorced Muslim women within the framework of constitutional guarantees.¹²

Suggestions And Conclusion

Advocates for the adoption of a Uniform Civil Code in India argue that the Indian Legislature should pave the way for development by embracing this comprehensive legal framework. A Uniform Civil Code is seen as a manifestation of justice, and proponents emphasize that there should be no compromise on this principle. The idea is that one nation should have one civil code to ensure consistency and fairness.

The proponents argue that the implementation of a Uniform Civil Code is not only a constitutional directive but also a means to integrate the diverse nation. Framing a UCC is viewed as a reflection of India's progressiveness on the global stage, aligning with advancements in various other domains. Additionally, proponents believe that it can contribute to reducing the impact of Vote Bank Politics, as all Indians would be treated uniformly under the UCC.

Furthermore, proponents argue that the adoption of a UCC promotes genuine secularism by eliminating disparities among citizens governed by different personal laws. The existing personal laws are often criticized as having loopholes, and proponents see the UCC as a solution to address these shortcomings and establish a more equitable and contemporary legal framework.

UCC should serve the best interests of all religions. To achieve this, a progressive and broadminded outlook is deemed necessary among the people to understand the spirit of such a code. Recognizing the sensitivity of the matter, proponents propose the constitution of a committee comprising eminent jurists. This committee's role would be to maintain uniformity in the code and exercise caution not to hurt the sentiments of any particular community. The emphasis is on approaching the implementation of the UCC with careful consideration, inclusivity, and respect for diverse religious sentiments.

¹⁰ Smt. Sarla Mudgal Vs. Union Of India, 1995 AIR 1531, 1995 SCC (3) 635.

¹¹ John Vallamattom and Another vs. Union of India, Writ Petition (Civil) 242 of 1997.

¹² Danial Latifi & Anr v. Union Of India, Writ Petition (civil) 868 of 1986.

The implementation of a UCC is seen as a transformative measure that could significantly impact society and propel progress. In the view of proponents, discrimination and inequality persist in Indian society, and the UCC is considered the most effective way to combat these issues and establish equality. It is perceived as an ideal approach to uphold citizens' fundamental rights and realize the principles of 'equality' and 'secularism' enshrined in the Indian Constitution.

It is essential to address the existing disparities in personal laws governing marriage, divorce, inheritance, and succession. Similar to how the Criminal Procedure Code applies uniformly to all, irrespective of religion or class, a UCC is long overdue. Critics who oppose the implementation of the UCC often argue that in an ideal state, it would be the perfect safeguard of citizens' rights. However, they contend that India has not progressed significantly from the state it was in when the Constitution was drafted, 50 years ago.

The call for a UCC is grounded in the belief that it is high time to bring about uniformity and equality in personal laws, mitigating discrimination prevalent in various aspects of familial and civil matters. Advocates envision the UCC as a crucial step toward a more just and egalitarian society.

References

1. A Kumar, Uniform Civil Code-Challenges and Constraints (Satyam Law International, 2012).
2. R. Agarwala, "Uniform Civil Code; A formula not a solution" published in "Family Law and Social Change", edited by Tahir Mahmood.
3. D.K. Shrivastava, Religious Freedom in India: a historical and constitutional study (Deep & Deep, New Delhi, India 1982)
4. G. J. Jeffrey, The Wheel of Law: India's Secularism in a Comparative Constitutional Context (Oxford University Press, New Delhi, 2003).
5. Solanki S. and S. Manaktala, "Uniform Civil Code and Conflict of Personal Laws" 3 International Journal of Law 9 (2017).
6. Bare Act of Constitution of India, 1950
7. Introduction to the Constitution of India Paperback –Durga Das Basu, Lexis Nexis; Twenty Second edition (1 June 2015)
8. M.P. Singh, "On Uniform Civil Code, Legal Pluralism and Constitution of India" 5 J. Indian L. & Soc'y (2014).