

Interplay between The Uniform Civil Code and the Reform of Religious Personal Laws

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Abstract: This paper aims to analyse the possibility of the implementation of a Uniform Civil Code in India, and how could the reform of religious personal laws be modelled into a feasible enactment of a UCC. The paper is introduced in Chapter 1, where an explanation of the UCC is provided and the thesis is briefly discussed. In Chapter 2, the Constituent Assembly Debates on the UCC are studied closely, and the opinions of Ambedkar and other members are analysed for the purpose of contextualising the issue. In Chapter 3, the UCC, as proposed by the BJP is discussed, as this is the most recent political model available, and in Chapter 4 the various criticisms of the UCC is explained. Chapter 5 serves the purpose of understanding the way in which the judiciary would be capable of enacting a UCC, and also to study the judgements until now which demonstrate the way in which the judiciary has been successful in reforming religious personal laws for the sake of a UCC. Chapter 6 analyses the findings in Chapter 5 and talks about a probable model of a feasible modern UCC, and the way it could be enacted. The paper concludes its arguments with Chapter 7 and suggestions are provided. The paper succeeds in understanding how the UCC engages and interacts with the

reform of religious personal laws, and how the latter could be a manifestation of the former.

Keywords: UCC, religious laws, personal laws, reform, BJP, Constitution, Constituent Assembly Debates, Supreme Court.

Introduction

The Uniform Civil Code (“UCC”) has been a subject of altercation ever since the debate on the formulation of the Indian Constitution began. The UCC seeks the enactment of a common law for all citizens of India, regardless of their religion or community. The UCC is enshrined within Article 44 of the Constitution¹⁰⁴, under Part IV: Directive Principles of State Policy (“DPSP”). By the virtue of being included in Part IV, DPSPs like the UCC are not enforceable by the courts. Therefore, their enforcement has been a matter of contention in India. There are various arguments both for and against a UCC, and due to this scuffle, the legislature has been unable to draft a UCC. On one hand, the proposers of a UCC argue that distinct religious laws are violative of Article 14 of the Constitution¹⁰⁵ as they are discriminatory to an extent; on the other hand, the UCC is critiqued on the grounds of Article 25 of the Constitution¹⁰⁶, and claims that it is solely a political move. I make the argument that in the absence of a common code of law for all, the judiciary has been actively reforming religious personal laws as a means to establish a Uniform Civil Code. In order to contextualize this argument, I first study the constituent assemble debates on the UCC, the UCC proposed by the BJP, and the criticisms of the UCC. Then, I study the various judgements in favor of a UCC, and I analyze my findings from the judgements.

Constitutional Assembly Debates on the Uniform Civil Code

Before understanding whether a UCC is practically applicable or not, we must understand the debate taking place during its inception in 1948 in the Constituent Assembly. The idea of a UCC put before the Assembly was outrightly rejected by religious fundamentalists such as the Hindu

¹⁰⁴ INDIA CONST. art. 44.

¹⁰⁵ INDIA CONST. art. 14.

¹⁰⁶ INDIA CONST. art. 25.

Mahasabha and other Muslim organizations. One of the strongest advocates of the UCC was Dr. B.R. Ambedkar, who succeeded in legitimizing the idea of a UCC under the Indian Constitution, under Article 44. Ambedkar was against a forceful implementation of the UCC as it might have ‘provoked the Muslims into rebellion’¹⁰⁷, and envisioned a code that gave people the option to be bound by it. Ambedkar’s idea to include the UCC as a DPSP was that the future governments would enact such a law where those persons who are willing to be governed under the Code would be allowed once they provide a declaration for the same. Ambedkar, in volume 7 of the Debates, felt that religion has an unreasonable extent of governance, and the legislature is justified in encroaching upon it for the sake of social reform.

Ambedkar was accompanied by eminent persons like Alladi Krishnawamy and KM Munshi¹⁰⁸ in defending the implementation of the UCC. Munshi promoted a civic national identity and a restriction of religion to the private sphere, as he noted that no Muslim country has recognized personal laws to be sacrosanct to a level that restricts the enactment of a UCC¹⁰⁹; whereas Alladi was of the view that the UCC would create a sense of unity, and would govern secluded communities who do not have their own personal laws¹¹⁰. Due to an overpowered opposition, freedom of religion was given priority over the UCC. On one hand, Muslim leaders like Kazi Karimuddin and Hasrat Mohani argued that their personal laws are governed by the Quran and advocated for the protection of minorities by preserving their personal laws¹¹¹, and on the other hand, upper caste

Hindus feared the introduction of a Hindu Code Bill with the UCC debate, and thus provided staunch opposition.

Idea of the Uniform Civil Code proposed by the Bhartiya Janata Party

The BJP’s political predecessor, the Jan Sangh, laid down the foundations for an ‘ideological UCC’ and it was first included in their election manifesto in 1998¹¹². The latest development by the BJP in furtherance of a UCC was the passing of the Muslim Women (Protection of Rights on Marriage) Act 2019¹¹³. The five petitions filed by Ashwini Upadhyay, a BJP lawyer, on matters of age marriage, maintenance, divorce, adoption, and succession before the Supreme Court¹¹⁴, could be considered as a modern way of animating the BJP’s promise of a UCC. The opposers of the UCC presented by the BJP believe that it will be a Hindutva centered model, and would be used to justify repressive laws such as the love-jihad laws. They counter that the BJP’s argument that the UCC would be beneficial for gender justice isn’t credible due to BJP Chief Ministers like Yogi Adityanath, who advocate for the ‘protection’ of women and not their ‘independence’¹¹⁵, and TS Rawat, who considers ripped jeans as a precursor of societal breakdown¹¹⁶. Furthermore, a BJP model is also looked down upon as they present the need of the UCC as a solution to protect the issues of ‘minority women’, and work under the presumption that Hindu women have been ‘given their rights’¹¹⁷. Thus, the BJP model of the UCC is looked as different from Ambedkar’s model.

¹⁰⁷ Vikas Pathak, *Ambedkar favored common civil code*, THE HINDU (Mar. 25, 2016), <https://www.thehindu.com/news/national/ambekar-favoured-common-civil-code/article7934565.ece> (accessed on Oct. 4, 2021).

¹⁰⁸ Abhinav Kumar, *Why Ambedkar supported Uniform Civil Code*, THE HINDU BUSINESS LINE (Apr 15, 2021), <https://www.thehindubusinessline.com/opinion/why-ambekar-supported-uniform-civil-code/article34320070.ece> (accessed on Oct. 8, 2021).

¹⁰⁹ D. C. Manooja, *Uniform Civil Code: A Suggestion*, 42 JILI 448, 452 (2000).

¹¹⁰ Dr. Bhagyashree A. Deshpande, *Need and Importance of Implementation of UCC in India*, 10 JKJ 83, (2020).

¹¹¹ Moin Qazi, *What did the Constituent Assembly say on the Uniform Civil Code?*, THE LEAFLET (Oct. 9, 2020), <https://www.theleaflet.in/what-did-the-constituent-assembly-say-on-the-uniform-civil-code/> (accessed on Oct. 5, 2021).

¹¹² Smriti Kak Ramachandran, *BJP, RSS hope for consensus on Uniform Civil Code*, HINDUSTAN TIMES (Aug 6, 2020), <https://www.hindustantimes.com/india-news/bjp-rss-hope-for-consensus->

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¹¹³ The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of the Parliament, 2019 (India).

¹¹⁴ Apoorva Mandhani, *Marriage, divorce, adoption — the 5 pleas by a BJP leader in SC that seek uniform civil laws*, THE PRINT (Mar 15, 2021), <https://theprint.in/judiciary/marriage-divorce-adoption-the-5-pleas-by-a-bjp-leader-in-sc-that-seek-uniform-civil-laws/621588/> (accessed on Oct. 20, 2021).

¹¹⁵ Suhasini Krishnan, *They Need Protection, Not Independence: How CM Yogi Views Women*, THE QUINT (Mar 21, 2017), <https://www.thequint.com/news/politics/yogi-adityanath-views-on-women-uttar-pradesh-chief-minister> (accessed on Oct. 17, 2021).

¹¹⁶ The Wire Staff, *Uttarakhand CM Says Women Wearing 'Ripped Jeans' Pave the Way for 'Societal Breakdown'*, THE WIRE (Mar 17, 2021), <https://thewire.in/politics/uttarakhand-cm-tirath-singh-rawat-ripped-jeans-women-comments> (accessed on Oct. 13, 2021).

¹¹⁷ Nivedita Menon, *A Uniform Civil Code in India: The State of the Debate in 2014*, 40 FEM. STUD. 480, 481 (2014).

Criticisms of the Uniform Civil Code

The Law Commission's Consultation Paper on Reform of Family Law read that a UCC is neither necessary, nor desirable, and thus acting as the primary authority behind the criticisms of the UCC. The commission held that even though the personal laws were different, they weren't outrightly discriminatory, thereby deemphasizing uniformity and stressing the importance of diversity¹¹⁸. The expectation from people of diverse religious beliefs to be governed under a single law is considered as a move against secularism, as secularism in India implies the existence of all religions (*Sarva Dharma Sambhava*). This is one of the primary criticisms of the UCC, as secularism is part of the basic political structure of India¹¹⁹. Even tribal concerns, raised by the Nagaland Bar Association, are to be considered, as a UCC might infringe upon the cultural dignity enshrined upon them. An enacted UCC is likely to favor the majority, thus imposing an unreasonable and unfair expectation from the minorities to adopt to said majoritarian rules. 14.2% of Indians are Muslims, and until now, they have been vocally opposed to a UCC. It is anticipated that the UCC would infringe upon their personal laws, and there must be dialogue with them before such a code is imposed. Furthermore, it is also argued that a reform within the personal laws would be more impactful than its substitution with a UCC¹²⁰. Imposing a UCC based on Hindu precedents and Hindu codes would be nothing short of an injustice for non-Hindus. Thus, due to these reasons, the legislature has been forced to untie the Gordian's knot with respect to a UCC draft.

Judicial formulation of the Uniform Civil Code

Ways in which the judiciary could formulate a UCC.

Reform in religious personal laws is the need of the hour. From practices like talaq-ul biddat (triple talaq) among Muslims, to regressive laws surrounding female intestate succession among Hindus¹²¹, it is no enigma that change is

necessary. The legislature and the judiciary have been cognizant of this, and through statutes and judgments, they seek to reform the orthodox and patriarchal personal laws. Due to the various practical criticisms of the UCC, implementation of a single uniform code is not feasible. Since one of the primary objectives of the UCC is to depart with the regressive and harmful aspects of personal religious laws, an argument can be made that the efforts of the judiciary and legislature in reforming said laws is a step towards achieving a UCC. A single uniform code would seem like a near-impossible feat to achieve, and thus the modern adaptation of the UCC might be the existence of personal laws, excluding its detrimental aspects. Thus, a modern and more feasible UCC can be enacted by the judiciary by passing judgements which detach the deleterious religious laws from the necessary ones. This flows from the constitutional principle¹²² protecting 'essential' and 'integral' practices of a religion.

Judgements in favor of a UCC.

In context of the Indian judiciary, the first mention of a UCC was made in *Mst. Khatji v Abdul Razak Sufi*¹²³ (1976) in the J&K High Court, where the Court discussed the UCC legislation in order to provide equal rights to women in matters of succession and inheritance. A more detailed and authoritative discussion on the UCC and Article 44 of the Constitution was done by the Supreme Court in 1985 in *Mohd. Ahmed Khan v Shah Bano Begum and Ors*¹²⁴. Shah Bano, a 62-year-old Muslim woman, was denied maintenance by her husband who pronounced divorce upon her. Here, the Supreme Court firstly held that section 125 of the Code of Criminal Procedure¹²⁵ would triumph Muslim personal law. Secondly, as an obiter, the Court stressed the importance of a UCC as per Article 44 of the Constitution, which would be beneficial for 'national integrity', and noted the inactivity of the State in drafting such a bill. Not long

¹¹⁸ Krishnadas Rajagopal, *Uniform civil code neither necessary nor desirable at this stage, says Law Commission*, THE HINDU (Aug 31, 2018), <https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article24833363.ece> (accessed on Oct. 15, 2021).

¹¹⁹ S.R. Bommai v Union Of India, (1994) 1 SCC 3 (India).

¹²⁰ Shabbeer Ahmed, *Uniform Civil Code (Article 44 of the Constitution) A Dead Letter*, 67 IJPS 545, 550 (2006).

¹²¹ Omprakash and Ors. v Radhacharan and Ors., (2009) 15 SCC 66 (India).

¹²² INDIA CONST. art. 25.

¹²³ *Mst. Khatji v Abdul Razak Sufi*, (1976) SCC OnLine J&K 23 (India).

¹²⁴ *Mohd. Ahmed Khan v Shah Bano Begum and Ors.*, (1985) 2 SCC 556 (India).

¹²⁵ The Code of Criminal Procedure, 1973, No. 2, Acts of the Parliament, 1974 (India).

after the *Shah Bano* judgement, the apex court, in *Jordan Diengdeh v S S Chopra* (1985)¹²⁶, again reiterated the need for framing a UCC because the laws relating to marriage and judicial separation were not uniform. Even in this case, the Supreme Court overrode the convoluted provisions of various personal laws, by allowing divorce under the grounds of irretrievable breakdown of marriage.

One of the most important, landmark judgements delivered by the Supreme Court, with respect to a UCC, is *Sarla Mudgal v Union of India*, 1995¹²⁷. The Court prohibited the practice of conversion of Hindu men to Islam for the sake of bigamy and held that a Hindu man solemnizing a second marriage after embracing Islam would attract criminal punishment under section 494 of the Indian Penal Code¹²⁸. Furthermore, the Court recommended the introduction of a UCC to supersede personal religious laws, as bigamy under Muslim law was against public morals and inconsistent with other personal laws. The Supreme Court, in *Lily Thomas v Union of India*, 2000¹²⁹, also hinted at the need for a UCC, when they held that non-Muslims would not be able to embrace Islam to dissolve their marriages or practice bigamy. Justice Sahai and Justice Singh were both of the opinion that the Centre should look into the formulation of a UCC as its “desirability could hardly be doubted”¹³⁰.

In *John Vallamattom and Anr. v Union of India*, 2003¹³¹, the Supreme Court further recognised the need for a UCC. The petition was filed by Christian priest, who challenged section 118 of the Indian Succession Act¹³² as it posed unreasonable restrictions upon Christians and was thus discriminatory. Declaring the section as unconstitutional, the Court also noted that matters such as succession and marriage are of a secular character and need to be covered

under Article 25 of the Constitution, and recognised that a Uniform Civil Code should govern such matters, and such a UCC need not necessarily be ‘anti-religion’¹³³. In *ABC v State (NCT of Delhi)*, 2015¹³⁴, a Christian mother wanted to be the sole guardian of her child under section 7 of the Guardianship and Wards Act¹³⁵, but was directed to disclose the details of the father under section 11¹³⁶. The Supreme Court allowed the mother to be the sole guardian any notice to the putative father, and also noted that Christian unwed mothers are at a position of disadvantage when compared to Hindu mothers, who are the natural guardians of their illegitimate children. The Court, once again, sanctioned the importance of a UCC.

The apex Court has also noted the importance of implementing a UCC in *Ahmedabad Women Action Group (AWAG) v. Union of India*, (1997)¹³⁷ and *Maharshi Avadhesh v Union Of India*, (1993)¹³⁸. In *Seema v Ashwani Kumar* (2006)¹³⁹, the Supreme Court held that marriages are to be registered under law irrespective of the religion of the parties. Now coming to the most recent and most prominent judgement on the UCC: *Shayara Bano v Union of India*, (2017)¹⁴⁰. The Supreme Court, in this case, held that the practice of talaq-ul biddat is unconstitutional and held that it is not an essential religious practice. The court again reaffirmed that matters such as marriage, divorce, and inheritance should not be under the dominion of personal religious laws, and they should be governed under a single UCC.

What could a present-day UCC look like?

As per Article 37 of the Constitution¹⁴¹, DPSPs are not enforceable by any court of law. However, the bedrock of the Indian Constitution is the balance between the DPSPs and the Fundamental Rights¹⁴², and the DPSPs are an

¹²⁶ *Jordan Diengdeh v S S Chopra*, AIR 1985 SC 935 (India).

¹²⁷ *Sarla Mudgal and Ors. v Union of India and Ors.*, (1995) 3 SCC 635 (India).

¹²⁸ The Indian Penal Code, 1860, No. 45, Acts of the Parliament, 1860 (India).

¹²⁹ *Lily Thomas v Union of India and Ors.*, (2000) 6 SCC 224 (India).

¹³⁰ *Ibid.*

¹³¹ *John Vallamattom and Anr v Union of India*, (2003) 6 SCC 611 (India).

¹³² The Indian Succession Act, 1925, No. 39, Acts of the Parliament, 1925 (India).

¹³³ Virendra Kumar, *Uniform Civil Code Revisited: A Juridical Analysis of John Vallamattom*, 45 JILI 315, 331 (2003).

¹³⁴ *ABC v State (NCT of Delhi)*, (2015) 10 SCC 1 (India).

¹³⁵ The Guardianship and Wards Act, 1890, No. 8, Acts of the Parliament, 1890 (India).

¹³⁶ *Ibid.*

¹³⁷ *Ahmedabad Women Action Group (AWAG) v Union of India*, (1997) 3 SCC 573 (India).

¹³⁸ *Maharshi Avadhesh v Union Of India*, (1993) 1 SCC 713 (India).

¹³⁹ *Seema v Ashwani Kumar*, AIR 2006 SC 1158 (India).

¹⁴⁰ *Shayara Bano v Union of India*, (2017) 9 SCC 1 (India).

¹⁴¹ INDIA CONST. art. 37.

¹⁴² *Minerva Mills v Union of India*, (1980) 1 SCR 206 (India).

essential part of the *conscience* of the Constitution. Thus, it would be wrong to argue that just because the UCC is part of the DPSPs, they shouldn't be enforced. This gives rise to the question, what could a modern UCC look like? It is clear that the reform of religious personal laws is a precondition for the emergence of a UCC¹⁴³. I have explained the various criticisms of the UCC. Furthermore, I have studied the attempts made by the judiciary in reforming various personal religious laws with the underlying intention to seek a UCC. Reform of religious personal laws based on uniform principles could be a solution to the UCC problem. A 'uniform' civil code need not be a common law for all citizens in the country, but it could be different laws, based on *uniform* principles of equality and gender justice. This form of a UCC could be achieved by reforming religious personal laws, by statutory enactment, or by judicial vigilance. The judgements discussed above provide support to this claim, as it was evident that courts are in fact entering private religious spheres by judicializing or de-judicializing practices related to marriage, property, succession, inheritance etc. The courts have been cognizant in recognizing the regressive aspects of these personal laws, and then passing judgements which detach such aspects, whilst maintaining the integrity of the religious laws. It is to be noted that in all these cases, while the Court is passing a liberal judgement on the interpretation of religious laws, they are also recommending for the formulation of a UCC. Thus, even though a 'common' civil code could be the final objective, personal laws unified by equitable principles could serve as a solution for the time.

Conclusion

It might be said that the criticisms of a UCC are overstated, and its perks outweigh its drawbacks. Goa became the first state in India to enforce a State UCC, reforming various legal issues. Marriages in Goa are to be registered under Goan Code, and succession, inheritance and distribution of property has been made equal for men and women. This reform by Goa was lauded by the Supreme

Court, as the ex-CJI S A Bobde remarked that other states should follow Goa's path¹⁴⁴. A nation-wide imposition of such a code might be problematic due to increased diversity in the demographic structure, but reforming the personal religious laws based on uniform principles would not be a far-fetched idea. There exist many irregularities in personal religious laws which are yet to be addressed by courts, such as the difference in the fundamental nature of marriage between different religions, disposition in the share of property etc. Therefore, it is important that both the legislature take active steps to firstly identify the equitable uniform principles, and then amend the personal laws, to complement said principles. The judiciary must ratify and reinforce these principles in civil matters, so as to give birth to a new, and more liberal, interpretation of religious personal laws. This would be the first feasible step in concocting a constitutional Uniform Civil Code for India.

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