

THE EXPECTED PAINS AND GAINS OF THE UNIFORM CIVIL CODE

AUTHOR – JASLEEN PASRICHA, STUDENT AT CHRIST UNIVERSITY DELHI NCR

BEST CITATION – JASLEEN PASRICHA, THE EXPECTED PAINS AND GAINS OF THE UNIFORM CIVIL CODE, *ILE WEEKLY REVIEW (ILE WR)*, 1 (10) OF 2023, PG. 28-34, APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2.

ABSTRACT

India is a reknowned throughout the world for its diversity and density. It is a home to a number of religious communities like Hindus, Muslims, Jains, Sikhs, Christians, etc. Personal laws still manifests institutions of family, marriage, politics, religion etc., making the Uniform Civil Code (hereinafter referred to as the UCC) a matter of cold war and debate among the population of its various communities. With the evolution and development of society not only on the face of it but also a change in the Psyche of the dwellers, there seems a need to evolve the personal laws of religious communities in India or have a Uniform Civil Code. Although India has a uniform set of laws followed nationwide in criminal, civil, and in some other matters. But when it comes to the communities' personal laws, India still sticks to its traditions. The UCC has currently taken over a heated discussion on the political stage with socio- legal implications. The framework of this article includes the paradigm of the Uniform Civil Code, the evolution of the UCC in India, the Landmark Verdicts of the Supreme Court leading to an upward push to the implementation of the UCC in India, etc. This research article centralizes its focus on the researched and analyzed points regarding the perks and downfalls as the expected consequences of implementation of the UCC in a highly diversified country like India. It gives the author's recommendations to prevent the poor consequences as expected post the implementation of the UCC. Lastly, it mentions the conclusion of the observation of the author on the findings of UCC.

Key Words- UCC, Article 25⁴², Religion, Article 44⁴³, Personal laws, Implementation, Culture, Marriage.

GRASP - EDUCATE - EVOLVE

⁴² INDIA CONST. art. 25

⁴³ INDIA CONST. art. 44

INTRODUCTION

Uniform Civil Code is the common governance system with the same set of laws over the population of a state. This replaces the old customary traditional laws that comprise the personal laws of the communities. This would include the personal laws of marriage, divorce, maintenance, inheritance, and adoption. Formal initiatives were seen from the side of the 21st and 22nd Law Commissions to spotlight the points of relevance of implementation of the UCC. The 21st and 22nd Law Commissions of India presented the points of views on the Uniform Civil Code and its application in India. The implementation of UCC is one of the spotlight agendas of the Bhartiya Janata Party, which was mentioned in the Lok Sabha manifesto of 2019 of BJP.

I. Evolution

Uniform Civil Code is not a concept taking birth in a jiffy. It has a long drawn socio- political and legal history. Under the Colonial Rule, in the 1800s, the codification of laws remained a talk of the colonial government. But it seemed not holding up certain personal laws as a part of their discussion. The Special Marriage Act ⁴⁴was enacted in 1954 and The Indian Succession Act in 1925⁴⁵. Special Marriage Act 1954 ⁴⁶protects the interest of the persons marrying outside their religious communities. The UCC came into picture in the 1830s when the Government of India Act 1833 or Charter Act 1833 ⁴⁷was passed. The loop reflected was that the non- Muslims and non- Hindus of the three presidencies had laws applicable but the situation was not the same in mofussil areas. The first law commission established in 1834 passed a report in 1840s called the Lex Loci Report ⁴⁸which had put forth the suggestion of executing the civil

laws of England as uniform sets of Laws. Later, there were laws implemented in India that were named as the codified personal laws involving the customary laws of different communities, including the Hindu personal laws. But the Muslim personal laws continued uncodified. Post independence, after numerous sets of discussions and debates, the members of the constituent assembly landed up to a decision of inserting the provision of Uniform Civil Code not as a compulsory provision but as a part of the Directive Principle of State Policy under Article 44⁴⁹. The article stated that the state shall endeavor to secure its citizens via the implementation of the uniform civil code. Thereafter, when India was under the rule of its first independent Prime Minister- Mr. Jawaharlal Nehru himself opposed radical change in society by enforcing the sets of laws under the UCC. Later, stepping in the realm was the case of Mohammed Ahmed Khan vs. Shah Bano in 1985⁵⁰. This benchmark judgment changed the whole social, political, and legal scenario of the nation. In this case, Shah Bano Begam was the petitioner in this case who claimed maintenance from her husband Mohammed Ahmed post divorce. Supreme Court of India passed a judgment in favor of the petitioner Shah Bano Begam. This ruling brought widespread changes to the fundamental socio-political system of the nation specifically the Muslim communities. The case was the limelight of the late 1900s. It led to the entry of Muslim Women (Protection of Rights on Divorce) Act 1986⁵¹. This raised attention of the Supreme Court and the legislature towards the Uniform Civil Code which is a pressing concern of today. In 2017, came in the Triple Talaq judgment of Shayara Bano vs Union of India and Others, 2017⁵² in which the Hon'ble Supreme Court of India which stated the practice of Talaq – e – Biddat unconstitutional. Later in 2019, Supreme Court judge Balbir Singh Chauhan headed the

⁴⁴ Special Marriage Act 1954, No. 43, Acts of Parliament, 1954(India)

⁴⁵ The Indian Succession Act 1925, No. 39, Act of the Parliament of the United Kingdom, 1925(United Kingdom)

⁴⁶ Supra note 4

⁴⁷ The Government of India Act 1833, No. 85, Acts of the Parliament of the United Kingdom, 1833(United Kingdom)

⁴⁸ [Anushka Yadav, Does the Uniform Civil Code brings uniformity in India, iPleaders, \(last visited 14 July, 2023, 7:33 PM\), Does the Uniform Civil Code brings uniformity in India - iPleaders](#)

⁴⁹ Supra note 3

⁵⁰ Mohammed Ahmed Khan vs. Shah Bano 1985 SCR (3) 844

⁵¹ Muslim Women (Protection of Rights on Divorce) Act 1986, No. 25, Acts of Parliament, 1986 (India)

⁵² Shayara Bano vs Union of India and Others AIR 2017 9 SCC 1 (SC)

21st law commission of India and put forward the points of implementation of the UCC to reform the personal laws. The same is analyzed in depth by the 22nd law commission of India.

II. The Benchmark Verdicts

A. Mohammed Ahmed Khan vs. Shah Bano 1985⁵³ - The case is one of the most controversial ones in India and a significantly one. It has now become a highlight among the precedents of the Indian judiciary. Shah Bano Begam and Ahmad Khan were married in 1932 and had three sons and two daughters. Shah Bano was his second wife. Here, in this case, the petitioner, Shah Bano Begam, approached the district court in April 1978 and filed a petition against her husband under section 125 of the Code of Civil Procedure, 1973⁵⁴ seeking maintenance. The section casts an obligation on the husband to pay maintenance to estranged wife. Shah Bano, after winning the case, approached the Madhya Pradesh High Court to increase maintenance, which was done successfully, but still, the matter reached the Supreme Court. The five judge bench including the then Chief Justice YV Chandrachud the judgment further increasing maintenance levels. But the case was withdrawn. This led to a major political fallout leading to the enactment of the Muslim Women (Protection on Divorce) Act,⁵⁵ resulting in liability of maintenance only till the iddat period leading to the emphasis on enactment of UCC by the SC. Thus, brought in a highlighted and heated discussion on the UCC.

B. Sarla Mudgal, President, Kalyani and Ors. Vs. Union of India (UOI) and Ors.⁵⁶ - the present case is a writ petition under article 32⁵⁷. In this case, the issue of bigamy was raised by the petitioners who claimed that their husbands converted their religion to Islam to wed another woman. They argued that such marriages were

illegal. The Supreme Court held that the previous marriage is still legally valid. The court also held that conversion of religion to Islam does not give any right to the man to choose a new wife. Thus, the husband was punished under section 494 of the Indian penal code⁵⁸. The case mentioned highlighted a step towards enactment of the UCC in India to promote the unity and integrity of the nation. Here, the court gave the fact that the UCC should be based on the Hindu Code.

C. Shayara Bano vs Union of India and Others⁵⁹ - Shayara Bano married to Rizwan Ahmed. After 15 years of their marriage, in 2016, he divorced her uttering the term 'Talaq' meaning divorce thrice. This is a practice of divorce in Muslim Personal Laws. This practice is called Triple Talaq or Talaq – e – Biddat. He stated no reason for the same. So, Shayara Bano filed a writ petition under Article 32⁶⁰ of the Indian constitution. She challenged the constitutionality of talaq-e-biddat, polygamy and nikah halala as they infringe the fundamental rights under [Article 14](#)⁶¹, [Article 15](#)⁶², [Article 21](#)⁶³ and [Article 25](#)⁶⁴. She was supported by prominent organizations like BEBAK and others. The petitioner Shayara Bano won the case. The judgment of the case was in the ratio 3:2. The court held that the practice of Talaq – e – Biddat lacks the sanction of Quran. It was unconstitutional as it violates the fundamental rights of Muslim women. Thus, measures should be taken to abolish such a practice.

III. Article 44⁶⁵ - Article 44 is covered under Part 4 of the Constitution of India which extends from articles 36- 51⁶⁶ of the constitution. Protection of Fundamental Rights has various provisions and precedents. These include the

⁵³ Supra note 10

⁵⁴ Code of Civil Procedure, 1973, § 125, No. 2, Acts of Parliament, 1973 (India)

⁵⁵ Supra note 11

⁵⁶ Sarla Mudgal, President, Kalyani and Ors. Vs. Union of India (UOI) and Ors. AIR 1995 SC 1531

⁵⁷ INDIA CONST. art. 32

⁵⁸ Indian Penal Code, 1860, § 494, No. 45, Acts of [Imperial Legislative Council](#), 1860 (India)

⁵⁹ Supra note 12

⁶⁰ Supra note 17

⁶¹ INDIA CONST. art. 14

⁶² INDIA CONST. art. 15

⁶³ INDIA CONST. art. 21

⁶⁴ Supra note 2

⁶⁵ Supra note 3

⁶⁶ INDIA CONST. art. 36- 51

most famous precedents of Keshvananda Bharti case⁶⁷, Maharshi Avdesh case, 1994⁶⁸, State of Bombay v. Narasu Appa Mali, 1952⁶⁹; and the provisions like article 32⁷⁰, article 226⁷¹, article 13⁷² which held the law going violating the Fundamental rights as void. According to the article 37⁷³ of the Constitution of India, the Directive Principles of State Policies are not as enforceable in any court of law as the fundamental rights. Thus, in Matters State note following these, the citizens cannot approach the courts directly as in case of fundamental rights through Article 32⁷⁴ and Article 226⁷⁵ of the Indian Constitution.

IV. Secularism and the UCC – Secularism is the foremost vision and objective of the UCC implementation. Secularism refers to the separating of the functions of state from that of the religious institutions. The UCC if implemented will add the highest worth and value to the fundamental concept of Secularism mentioned in the Preamble of Constitution of India. When talking of religious affiliations and the UCC, the one foremost term that pops into the Indians' minds is secularism. It is also a highlighted aspect of the Preamble of the Constitution of India and currently also a debated one. The implementation of UCC will reduce favoritism in politics. It will promote equality and secularization of politics.

V. Goa and the UCC⁷⁶ – the relevant and bright example of the implementation of UCC is Goa according to the Hon'ble Supreme Court of India. But The Portuguese Civil Code of 1867⁷⁷ pulps the limitations of implementation in Goa. When whole of India was under the British control, the separate state of Goa was under the Portuguese rule. It saw the implementation

of the Goa Civil Code which continues in the form of the execution of the Uniform Civil Code. Thus, making it the only state with the implementation of the UCC. But there are some of the loops reflected in the laws of Goa. These are that still the practice of bigamy exists after the abolishment of polygamy. This is seen mostly in case of Hindu women not bearing child. Another problem seen in the implementation of UCC in Goa is that secularism is not seen prominent in practice that means the practice of separation between the state and the religion or the church is not followed. It is also observed that the other states in comparison to Goa are more densely populated, larger in size and diverse, thus can have greater difference in the consequences of implementation of UCC as compared to that in Goa.

VI. Arguments in favor of the Uniform Civil Code – the enactment of Uniform Civil Code will boost the implementation of the fundamental rights of the citizens, it restrict gender discrimination, Safeguard the personal laws of the communities and various other points add to worth of UCC in India. The Advocates of the UCC puts forth the Arguments that the UCC will produce the following benefits –

A. Gender Equality – there is observed a great concern of discrimination against women in India through the customs and practices established under the personal laws. The UCC that would disable the personal communal laws in specific areas of legislations will bring in gender equality and gender justice. Example – through the case of Shayara Bano vs Union of India⁷⁸ highlighted gender discrimination against Muslim women in cases of Marriage through the concept of Triple Talaq in the Muslim Marriage Laws. This was the practice of Talaq – e – Biddat that gave a sense of superiority to men to get divorced by simply uttering the term Talaq thrice. But the women had to undergo the procedure of law to do so. The Supreme Court recognized this as an unfair

⁶⁷ Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala Case, 1973, (1973) 4 SCC 225

⁶⁸ Maharshi Avadhesh vs Union Of India on 6 April, 1993 (1994) SCC, Supl. (1) 713

⁶⁹ State of Bombay v. Narasu Appa Mali, 1952 AIR 1952 BOM 84

⁷⁰ Supra note 17

⁷¹ INDIA CONST. art. 226

⁷² INDIA CONST. art. 13

⁷³ INDIA CONST. art. 37

⁷⁴ Supra note 17

⁷⁵ Supra note 31

⁷⁶ Supra note 8

⁷⁷ Ibid

⁷⁸ Supra note 12

treatment and gave the ruling in favor of Shayara Bano. Thus, bringing in fairness among the two genders. This concept is also highlighted through the Article 14⁷⁹ and article 15⁸⁰ of the Indian Constitution.

B. Decrease in Internal Affairs – the Uniform Civil Code will promote the concepts of equality among genders as well as different communities and a rule of a uniform law. This would reduce the internal affairs among different communities and thus promote internal national security.

C. Inter- community marriage – the enactment of the UCC will be a great and grand step towards solving the disputes of inter- community marriages. It will provide an easy means to the people of different faiths to marry without only looking up to their personal laws. It will be a core and consistent law to rely upon for inter- community matters.

D. Consistent governance and Legal solutions- the UCC would be a great legal solution and achievement for the country at national and international when viewed from the point of the government. It would provide a helping hand to the easy execution of laws. Sets of Laws of different communities will not be needed to be referred to in every matter. Only a uniform law will prevail that will give consistent governance.

E. Burden of the Judiciary – the Burden of the Judiciary will be reduced to an extent as the judiciary will not have to refer to the sets of provisions of personal laws relating to the case. They will only have one single law to rely upon in matters of disputes related to personal laws. This solution will reduce the cost, burden and time of the court on each case. Thus, reducing the delays in solving the case.

F. Favoritism- In the party politics in the elections of India, the favoritism is observed. This refers to the situation where the large number of voters tend to tilt their support to a

political party of their own religious or communal interest. This could be reduced when the UCC is implemented with its effects of religious and gender equality.

G. Modern Nation – the UCC will be a step towards modern united country despite its diversity. It will be a step of coming together of the existing religions in India. The essence of the 24 strokes will be reflected in one Ashoka Chakra of the Tricolor, i.e., various different religious communities will be reflected as a part of One Nation, One Law.

VII. Arguments against the UCC – The cultural and communal history portrays the plagued lives of women governed by the personal laws of the communities they belong to. They were subjected to discrimination, disparity, polygamy (in certain cases), etc.

A. Survey on the views of stakeholders – UCC cannot be implemented just by one order or so. It needs a proper in depth analysis of the views of the stakeholders and the reasons behind the same. The stakeholders will not only involve the people involved the subject matter but also the people affected.

B. Loss of the Roots- the highly tempting communal traditional culture will all lose their roots if blended into one single uniform law. This would be because the UCC will be a Code set for implementation over all different communities and not just one single community. It will be legally easy to sort cases and their remedies but not morally and ethically as accepted by various communities.

C. Violates Democratic Principles- the UCC implementation can harm and suppress the democratic principles of secularism, justice, equality, freedom. It can also violate fundamental rights under Article 19⁸¹, article 25⁸², etc.

D. Multiculturalism and the Communal violence- India is the most multicultural

⁷⁹Supra note 21

⁸⁰Supra note 22

⁸¹ INDIA CONST. art. 19

⁸² Supra note 2

territory of the world which brings in complications in implementation of UCC. Communal violence is the most fundamental evil to be predicted on the implementation of the UCC. Not only due to Communal diversity on the face of it but also diversity within a particular community. People specifically in India are emotionally attached to their roots and their ancient and traditional cultures. Come what may, they are highly magnetized towards their religion, culture, tradition, region, language, attire, etc. which reduces the level of tolerance. The existing variety of communities even have variety of beliefs and actions. They also have the fundamental right for the protection of the same like that of article 25⁸³. The people are thus tilted towards their own communal cultures. Thus, leading to violence over any of the disputes in cultural matters. Therefore, there have been several instances of communal violence leading to backlogs in India as seen in Babri Masjid dispute in Ayodhya called the Ayodhya Dispute Case⁸⁴.

E. Disruption of family lawyers' jobs - India has a great number of family lawyers than the lawyers working in other arenas of law. Thus, it would lead to the loss of jobs of family lawyers in India leading to the raised unemployment.

F. Difficulties in Execution- the various concerns raised including communal violence, collection of views of all stakeholders due to emotional attachment to the culture, makes it highly difficult to implement the UCC in a nation like India.

VIII. Recommendations

A. Check and Balance- there should be a check and balance. The aims under Articles 51A(e)⁸⁵ and article 51 (f)⁸⁶ must be implemented appropriately with utmost attention all the aspects.

B. Academic Discipline - If the UCC is implemented and adhered to, to understand and interpret its laws and relation to other subjects it should be added as a subject to the academic discipline especially for the students of law and political science.

C. Learned Judiciary - There will be a high need and demand for UCC equipped lawyers and judges who will have great knowledge and skills in dispute resolution in matters regarding the UCC. The existing family lawyers won't be able to argue on the basis of their existing knowledge and skills.

D. Trainings - special training must be provided to the legal practitioners to get hold of the techniques and technicalities of the Uniform Civil Code.

E. Understandable - the language presented and explained to a layman for the interpretation and better understanding should be simple and crisp. It should not be manipulated with high semantics of law. It should be considerably understandable.

CONCLUSION

India is a country of undefined and unconfined heterogeneity. This led to different communities having their own jargon of laws. The execution of the Uniform Civil Code will give perks to foster gender equality, national integrity, Secularism, uniformity, good governance. But on the contrary, the same uniform civil code can lead to the birth of evils like deforesting the cultural roots, communal violence, the improper execution, violation of democracy and its principles etc. Not only passing the law would help India but also a proper set of execution and implementation should be taken into consideration to prevent the evils. If the steps towards implementation of UCC are taken appropriately, no by-product will reflect its backlogs. The same can be done by taking into consideration the mentioned recommendations for the successful implementation of the UCC.

REFERENCE

⁸³ Ibid

⁸⁴M. Siddiq (D) thr. L.Rs. vs. Suresh Das and Ors. (08.03.2019 - SC) : MANU/SC/0399/2019

⁸⁵ INDIA CONST. art. 51 cl. A sub cl.(e)

⁸⁶INDIA CONST. art. 51 cl. A sub cl. (f)



Judgements

1. Mohammed Ahmed Khan vs. Shah Bano
1985 SCR (3) 844
2. Lily Thomas vs. Union of India (UOI) and
Ors. MANU/SC/0687/2013
3. Kesavananda Bharati Sripadagalvaru
and Ors v State of Kerala Case, 1973, (1973) 4
SCC 225
4. Maharshi Avadhesh vs Union Of India on
6 April,1993 (1994) SCC, Supl. (1) 713
5. State of Bombay v. Narasu Appa
Mali,1952 AIR 1952 BOM 84
6. Sarla Mudgal, President, Kalyani and Ors.
Vs. Union of India (UOI) and Ors. AIR 1995 SC 1531
7. Shayara Bano and Ors. vs. Union of India
(UOI) and Ors. (22.08.2017 - SC) :
MANU/SC/1031/2017
8. [Dr. M. Ismail Faruqui Vs Union of India
and others](#) AIR 1995 SC 605 A

Websites

1. [Anushka Yadav](#), Does the Uniform Civil
Code brings uniformity in India, iPleaders, [Does
the Uniform Civil Code brings uniformity in India
- iPleaders](#) (last visited 14 July, 2023, 7:33 PM).

GRASP - EDUCATE - EVOLVE