



ILE

WEEKLY REVIEW

VOLUME 1 AND ISSUE 4 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE WEEKLY REVIEW

APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://wr.iledu.in/>

Journal's Editorial Page – <https://wr.iledu.in/editorial-board/>

Volume 1 and Issue 4 (Access Full Issue on – <https://wr.iledu.in/category/volume-1-and-issue-4-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://wr.iledu.in/terms-and-condition/>

A CRITICAL ANALYSIS OF UNIFORM CIVIL CODE

AUTHOR – DURGESH YADAV, STUDENT AT B R AMBEDKAR NATIONAL LAW UNIVERSITY, SONIPAT

BEST CITATION – DURGESH YADAV, A CRITICAL ANALYSIS OF UNIFORM CIVIL CODE, *ILE WEEKLY REVIEW (ILE WR)*, 1 (4) OF 2023, PG. 23-27, APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2.

ABSTRACT

Last year, Chief Minister Pushkar Singh Dhama constituted a UCC panel to draft a report on Uniform Civil Code with core suggestion to ensure equality and harmony among different religions. And now, UCC has reignited the debates as soon as the panel may submit its report to the Uttarakhand state government⁹. Also, the law commission of India issued a statement seeking the views of public and religious institutions on the Uniform Civil Code.

Along with the statement of our Prime Minister Narendra Modi in Madhya Pradesh, this issue ignited and became a matter of political debate all over the country. He made a strong pitch for the endorsement of UCC as a country could not have different laws for different people.¹⁰ He also discussed the barbaric condition of the backward caste of Muslims and the secular political class. He also stated that other political parties neglect this idea because of their vote bank from a specific community and religion.

But these debates were not recent ones. It has long records from the past. British and Law Commissions gave their suggestion for the implementation of common law which was above all other personal laws of humans in various private spheres. Yet this decision is still pending before the Supreme Court of India as it can curtail the ambit and scope of religious freedom which is our fundamental right mentioned in the Constitution. Between huge and long-lasting debates of religious rights, I am here going to explore the legal framework of the Uniform Civil Code and its history with the arguments of both sides.

Keywords: Uniform Civil Code, Historical Background, Constitution, Article 25, Uttarakhand

GRASP - EDUCATE - EVOLVE

⁹ Liz Mathew, Uttarakhand UCC draft ready, likely template for Centre law, The Indian Express (Last Accessed on 5th July, 2023- 7:15PM) <https://indianexpress.com/article/political-pulse/uttarakhand-ucc-draft-template-centre-law-8694786/>

¹⁰ KRISHNADAS RAJAGOPAL, PM Modi's pitch for Uniform Civil Code is on the same lines as Centre's affidavit in Supreme Court, The Hindu (Last Accessed on 5th July, 2023- 7:15PM) <https://www.thehindu.com/news/national/pms-pitch-for-ucc-is-on-the-same-lines-as-centres-affidavit-in-supreme-court/article67015235.ece>

INTRODUCTION

UCC is mainly based on the idea of 'One Nation, One Law'. It means to have a common set of laws governing personal issues such as divorce, marriage, inheritance, and adoption for all irrespective of their religion. Simply it means one civil code for all the citizens and the abolition of their personal laws regulating the people for years. It has intense debate because of the diversity in India. Also, India is a secular country and the constitution doesn't interfere in religious matters. Constituent Assembly also discussed the same but as the diverse opinion was there in this matter in the assembly; it added this provision in DSPS and asked the future government to make provision as per necessity. They wanted to limit personal laws and govern India by the constitution that has the same laws for all.

Before further discussion, firstly learn about the UCC. In India, there are mainly 2 types of laws prevalent in the society- criminal and civil laws. Criminal laws are uniform and equally applicable to the whole society. On the other side, there are civil laws, which are based on faith. In civil cases, the personal laws are implemented by the courts according to constitutional norms. In India, huge diversity can be found over the country. There is a huge chaos of religion, ethnicity, customs, and social structure. All have their different laws as per their customs and traditions. These caused perplexed structure and created uncertainty.

So, there is a need to formulate a law that applies to the whole society regardless of their norms. It is applicable in all religious communities on the issues of divorce, marriage, inheritance, and adoption.

HISTORY

If we discuss the present stance of the Uniform Civil Code, it is mentioned in Article 44 of the Constitution (Directive Principle of State Policy) which states that the state shall endeavor to secure a Uniform Civil Code for the citizens throughout the territory of India. This is the

foundation for the UCC to become one law above all the personal laws in India. It is important as it creates inequality, especially for women and other vulnerable classes of society. But, it has a long and vast history. Let's discuss that-

If we scrutinize its origin, it is traced back to the Romans. They governed themselves based on civil laws, which weren't based on customs and traditions. In Rome, this was first implemented by Emperor Justinian, in 527 CE¹¹. In Mesopotamia, the same case is followed by them also. They complied with the code of Ur-Nammu. It is the oldest law code in history. It encouraged the people to think of themselves as one family governed by one set of rules.¹²

In modern states like, the United States Constitution mentioned laws for all. It said that all men and women were created equal and had equal minds. All citizens must treat the same and be regulated by the same law. But, this is not the case in India. Laws here are based on religion, caste, and culture. They were based on the peculiar laws of different states like Meghalaya, Mizoram, etc.

When the British came to India, they tried to change this ideology and made common law for all. But still, in the Lex Loci report, this was presented before the 1st Law Commission in 1834, the British Government tried to make uniform laws related to crimes, evidence, and contract; where they were codified. The personal laws kept away from that codification. This became, the British thought that if they meddle with the personal law, it created chaos and people stand against them. But with time, reforms were encouraged by the society in their traditions like Sati Pratha, Child Marriage, etc. The need for a single law is seen in society. In

¹¹ Saman, Uniform Civil Code In Foreign Countries: Its Evaluation From The Perspective Of India, Legal Service India, (Last Accessed on 5th July,2023- 7:17PM) <https://www.legalserviceindia.com/legal/article-7248-uniform-civil-code-in-foreign-countries-its-evaluation-from-the-perspective-of-india.html>

¹² ADITI NARAYANI and VASUNDHARA SHANKAR, Uniform Civil Code can be the real unifying force in India. Critics must think again, the Print , (Last Accessed on 5th July,2023- 7:17PM) <https://theprint.in/opinion/uniform-civil-code-can-be-the-real-unifying-force-in-india-critics-must-think-again/953898/>

1937, a committee was formed to examine the laws and norms to run India in a better way. It suggested codifying personal laws. Hindu Women's Right to Property Act was also passed in the same year. Shariat Law of 1937 was also implemented to govern the marriage, divorce, maintenance, adoption, succession, and inheritance of Muslims. Again in 1941, a committee was made called the B N Rau Committee to codify Hindu Laws. Its main aim is to form a civil code of marriage and succession and examine the necessity of common Hindu law. It was set up again in 1944 and presented its report in 1947 before the Indian Parliament.

The same goes for the Special Marriage Act (which determines laws for inter-religious marriages). It was first enacted in 1872 but had limited applications. But later, in 1932, an amendment was made to this Act that permitted Hindus, Jains, Muslims, and Sikhs to marry without renouncing their religion.¹³¹⁴

CONSTITUENT ASSEMBLY DEBATES

In 1948, when the Indian Constitution was in the process of formation, the members of the constituent assembly discussed and debated a lot on various issues. They prioritized the values of pluralism because of the bloody partition of 1947. They wanted to make laws for all religions to eradicate the feeling of division and rule by the British from India. But all discussion stands still when it comes to UCC. It required abolishing the personal laws which were based on the ancient text and scriptures and unified under a law. The constituent Assembly wanted to abolish personal laws and enact laws for all sex, gender, and sexual orientation. This seemed like a fiendishly tough task at that time. This social reform became a bone of contention among members of the constituent assembly. It was divided into 2 parts and debated for months on

that but could not reach a consensus and finally, they compromised. It was stated that UCC was against the freedom of religion. B R Ambedkar was the strongest proponent of UCC and suggested to be involved in Part III which contains Fundamental Rights for equal protection and removal of all forms of inequalities and reform of the social system. Contrary to it, J L Nehru and the Congress party were against this idea and called it unethical for the minorities as it was against their religious freedom. He feared civil strife like partition and said that it was not the right time to implement this law. He suggested forming ground initially and when enacted the same.¹⁵

After all the debates and discussions, it was in Part IV of the Indian Constitution which contained DPSP. By this, it became simply a suggestion and optional for the government.

But, till now it hasn't become a law because of immense opposition from various religious groups like Islamic Fundamentalists and Orthodox Hindus. They wanted their ancient texts like the Quran and Shastra to determine their laws. They feared that it would open the Pandora's box and diminish their authority. So it became a dead letter that would be implemented when India was ready to accept.

Post-Independence Development

First of all, when we talk about the Uniform Civil Code of Goa, it was enacted by the Portuguese Civil Code in 1867. It was subjected to amendment and repeal by the authority, but by the Goa Daman and Diu Administration Act of 1962, it was passed by the Goa Government.¹⁶

After Indian Independence, various laws like Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoption and Maintenance Act were merely amended as per

¹³ Wikimedia Foundation, Uniform Civil Code, Wikipedia, (Last Accessed on 5 July, 2023, 7: 24 PM)
https://en.wikipedia.org/wiki/Uniform_Civil_Code#:~:text=It%20is%20a%20set%20of%20laws%20being%20applied%20to%20them.

¹⁴ Editorial Team, Uniform Civil Code, DrishtiIAS, (Last Accessed on 5 July, 2023, 7: 24 PM)
<https://www.drishtias.com/daily-updates/daily-news-analysis/uniform-civil-code-9>

¹⁵ Patil Amruta, Constituent Assembly Debate on Uniform Civil Code, Prepp, (Last Accessed on 5 July, 2023, 7: 28 PM)
<https://prepp.in/news/e-492-constituent-assembly-debate-on-uniform-civil-code---indian-polity-notes>

¹⁶ MS. Chitraloungani, Uniform Civil Code in Goa, Legal Service India, (Last Accessed on 5 July, 2023, 7: 28 PM)
<https://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa.html>

the needs of the society. They were considered as the first step towards uniform civil code.

SHAH BANO CASE¹⁷

In 1985, it gained momentum again with the Shah Bano Case, where she fought for her maintenance from her husband. In this case, a 73 year old Muslim lady was divorced by her husband by triple talaq. According to the Muslim personal laws, there was provision of maintenance of 3 months. She sought regular maintenance by questioning unilateral divorce from her husband as it was discriminatory provision. Overruled the judgment of the lower court, the Supreme Court held its decision in her favour under Section 125 of the All India Criminal Code. This rule was applied on all regardless of their religion. In this judgment, the demand for the Uniform Civil Code was stated by the SC.

CONTENTION OF BOTH SIDES

Contention in Against

- The main argument against UCC is that by implementing this law, the government tried to impose Hindu Laws on other religions. They have to follow Hindu customs.
- It was against the Constitution itself. It was opposite to Article 25 of the Indian Constitution which provides freedom of conscience and free profession, practice, and propagation of religion. If we implement UCC, it was contradictory to the main idea of the constitution.
- It was against the unity and diversity of India. It created disturbance and uniformity that could lead to the homogenization of laws that are not good for multicultural countries like India.
- There is not for UCC as in India, there are secular laws like Section 125 of the Criminal Procedure Code to provide maintenance to all.

- It was also contended that our founding fathers of the Indian Constitution didn't want total uniformity as they put personal laws in the concurrent list where both center and state governments can make laws. If they want UCC, they put this entry in the Union list for implementation.
- And even laws on crime varied to state; there is no need for uniform on the issue of marriage and other personal issues.¹⁸

Contention in favour

- Supporters argue that UCC is not Hindu Civil Code that favored Hindus only. It is all religions. Its main aim is the welfare of all and the removal of all forms of injustice and inequalities. Laws of UCC are based on the same principles just like other countries like the US and Germany.
- The Indian Constitution under Article 44 mandates the government to work for the UCC to ensure equality.
- The personal laws were against the fundamental rights of women. Some Hindu customary laws of Hindus prohibit widow remarriage and also support child marriages. Muslim personal laws forbade the maintenance of women after divorce and also while the property division, the widow's wife got 1/8th of her husband's property and the daughter got half the property compared to her brother. Christian personal laws barred Christian Catholics from divorce.
- Proponents argued that UCC promotes national integration by applying the notion of 'one nation, one law. This is good for the promotion of peace and harmony in society.

¹⁷ Mohd. Ahmad Khan v. Shah Bano Begum And Ors AIR 1985 SC 945

¹⁸ Editorial Team, Arguments against Implementation of Uniform Civil Code, IPleader, (Last Accessed on 5 July, 2023 , 7: 28 PM) <https://blog.ipleaders.in/arguments-implementation-uniform-civil-code/>

- It was also cited that just like Goa, where uniform civil code is successful, just like the same it must be implemented on whole Indians.
- It also opens provisions for the LGBTQ+ communities. Different activists and NGOs supported the same.¹⁹

CONCLUSION

In the present scenario, a party ruling in the center is trying to implement this law. In their 2019 manifesto also, they promised the best provisions for different religions. Parties against it called it a move against secularism. It was considered as a conspiracy against the minorities in India. Proponents argued that it was against the biased and oppressive personal laws of different faith. 22nd Law Commission of India has decided to solicit the viewpoint of public and various religious organizations of India and then take further decision on the same. Now, it is up to our government, to make laws at UCC.²⁰



¹⁹ Editorial Team, The Uniform Civil Code explained — What's the argument in favour and against, CNBC TV 18, (Last Accessed on 5 July, 2023 , 7: 38 PM)

<https://www.cnbc18.com/india/uniform-civil-code-explained-parliament-bjp-aimim-favour-against-arguments-15382121.htm>

²⁰ Editorial Team, Law Commission seeks views on Uniform Civil Code: What is the UCC and the debate around it, Indian Express, (Last Accessed on 5 July, 2023 , 7: 28 PM)

<https://indianexpress.com/article/explained/explained-law/law-commission-uniform-civil-code-8671382/>