

A Study of the Individual's Rights and the State's Function in the Uniform Civil Code

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Abstract: *The study project focuses on investigating the issues that arise when there is no uniform civil code. It talks about the issues the nation is now experiencing and how various persons are treated depending on their own laws. India is a multilingual, multireligious nation that is divided in many ways but bound together by a sense of nationalism. Nowadays, every individual is subject to their own unique laws concerning marriage, inheritance, divorce, and other matters.*

The word "secular" is used in the preamble of the Constitution to ensure people's freedom of religion and to state that the state is secular and should not meddle in matters of personal faith. The State is negatively commanded by Indian secularism to treat its citizens in accordance with "Sarva Dharm Sambhava" and to avoid identifying with any one religion. A small number of academics have maintained that Indian society is not sufficiently evolved socially to make use of the "Uniform civil code" (henceforth referred to as UCC, and hence remains a matter of controversy in Indian context). The researcher has noted that this is because India is a large country with a variety of cultures, religions, and other factors. Enforcing UCC may be seen as an unwarranted encroachment of State law, which would violate several religious customs and cultural traditions.

In the event that UCC is implemented, uniting the tribes will provide another difficulty. There are still many tribal people in India that want to be run according to their traditions and were given freedom to do so. In this sense, there are additional exceptions made by other pieces of legislation and secular procedural laws. In the recent past, there has needed to be extraordinary community unanimity in order to implement a UCC throughout the nation

Keywords: Uniform Civil Code, Legal Pluralism, Social Justice

I. INTRODUCTION

In essence, a UCC entails consolidating all "personal laws" into a single body of secular legislation addressing these issues, which will be applicable to all Indian citizens regardless of the society to which they may belong. The specifics of this unified code are still being worked out, but it is expected to combine the most progressive and contemporary elements of all current personal laws with the most outdated ones.

According to one of the Constitution's "directive principles," "The State shall endeavour to secure for the citizens a UCC throughout the territory of India."³ The guiding principles "shall not be enforceable by any court," as the Constitution expressly states.⁴ However, they are "fundamental in the country's governance." This demonstrates that although the UCC should be applied in some way, as stated in our constitution, its application is not required. As a result, the argument over whether India needs a UCC is still ongoing.

During the lengthy discussion on UCC in the Constitutional Assembly, several Muslim MPs opposed its inclusion. Mr. B. Pocker Sahib Bahadur questioned the definition and status of the word UCC. Muslim members were concerned because they did not want any specific legislation to be imposed as the norm and instead sought to prevent majoritarian rule.⁵ Unfortunately, the necessity for a strong national character of the country was overshadowed by this unjustified anxiety. The Muslim members believed that a citizen's stringent personal law should not be included by the term "civil code." According to Shri K.M. Munshi, "the whole object of this Article is that as and when the Parliament thinks proper or rather when the majority in Parliament thinks proper an attempt may be made to unify the personal law of the

Country," allaying the concerns of the members who questioned the meaning of the word UCC and the purpose of having such a provision in the Constitution. In response to inquiries from the minority community regarding the UCC's provisions in the Constituent Assembly, Dr. B.R. Ambedkar, the chairman of the Drafting Committee, stated that "it was intended to have a Code which provided for uniformity of law in matters of marriages, divorce, succession, etc. irrespective of religion, community⁶," among other things. In a passionate speech on behalf of UCC, Justice M.C. Chagla said that Article 44 is a required law that binds the government and that it is its responsibility to implement its provisions. Every region and group in the nation must abide by the provisions and guidelines of the Constitution, which was adopted for the whole country.⁷

Marital and family relations have historically been controlled by the personal laws of the major religious organizations, with the government maintaining a policy of noninterference in such rules until specific religious communities demanded a change⁸. India is a religiously diverse country. The Nation is made up of Hindus, Buddhists, Jains, Christians, Muslims, Parsees, and Sikhs. The fundamental quality of the Indian nation is its unity in variety. Every town has its own set of rules on wills, succession, adoption, marriage and divorce, and babies and minors. Individuals have the right to apply their own personal laws, rather than the laws that would apply in their local area, and these laws accompany them across the States of India where they are a part of the national law.

Personal laws, which include both statutory and customary rules, are specific to religious or cultural groups falling under a certain national jurisdiction. They regulate family dynamics by addressing issues like marriage and divorce, child support, and inheritance. India is a secular nation where each group is free to enact its own laws.

It should be emphasized that the establishment of UCC in part IV of the Indian Constitution, as opposed to any other enforceable section, was motivated by the aforementioned two clauses.⁹ Although the Indian Constitution's founders recognized the value of a UCC, they were unable to include it as a required clause. During the American Revolution, the Confederation of Indian States was a highly unstable union with a wide range of cultures, religions, and customs under its powerful control. If UCC had been a required clause back then, it may have disrupted the foundations of Indian unity.

Enshrined in the preamble of the Indian Constitution, secularism is as vital and indivisible as democracy, socialism, unity, and the integrity of the nation. A state's laws must be consistent and logical in both their interpretation and implementation; enforcing disparate rules solely on the basis of religion distorts this uniformity. One may argue that equality should only be maintained amongst equals, but religion cannot be the only factor considered when determining whether something is equal or unequal. There is a need for uniformity in personal laws when they violate fundamental human rights or conflict with governmental policies. Uniformity in this context refers to the possibility of granting all citizens similar rights with regard to fundamental human rights, as protected by local laws and supported by international legal frameworks.

The Indian Constitution specifies in its Preamble that the country is a secular, democratic, republican one. Thus, there isn't a state religion. A secular state is prohibited from discriminating against individuals based only on their religion, as religion pertains solely to the human relationship with God. It implies that a person's daily life shouldn't be impacted by their faith. Secularization and the objective of a unified civil code are closely related, much like cause and effect. That is to say, a person's religion should only dictate which God or entity he worships, not what laws apply to him. Laws as such need to derive from the sovereign text of the nation—in India's case, the Constitution—rather than from religious interpretation. In *S.R. Bommai v. Union of India*¹⁰, Hon. Justice Jeevan Reddy said that religion is a matter of personal faith and cannot be combined with secular activity. The State may control religion by the enactment of laws.

Because of its demographics, secularism has a special meaning and interpretation in the Indian setting. Secularism in India cannot be equated to what is understood to be secular in America and Europe. The fact that America and European nations underwent the periods of renaissance, reformation, and enlightenment is one of the reasons why such comparisons are seldom made. Therefore, in the West, legislation prohibiting the state from interfering with religion may be passed. In India, however, secularism keeps spiritualism and personal faith apart, creating a wall between religion and the State. The rationale for this is that, as India has not gone through these stages, it is the State's duty to become involved in religious affairs in order to eliminate any obstacles to State rule.

The term secular is imprecise and takes on numerous meanings depending on the situation. In the sense that a secular state cannot be a religious state, it is antagonistic to religion. Some believe that a secular state is anti-religious in this

situation. A state that does not practice any religion at all does not automatically entail that it is anti-religious. It may be a state that honors every faith. The 42nd Constitutional Amendment adds the adjective "secular" to the preamble, although the Constitution has always been imbued with a secular spirit from its earliest beginnings. The basis for the basic rights to equality before the law and the freedom to profess one's religion was laid by this distinctly secular mindset.

Like with Muslims or Christians, Hindu personal law, including that pertaining to marriage, succession, and other matters, has its roots in ceremony. While the Constitution mandates the creation of a "UCC" for the whole of India, it would not be incorrect to observe that while Hindus, Sikhs, Buddhists, and Jains have sacrificed their feelings in the sake of national unity and integration, certain other groups have not.¹²

The idea of an overbroad Indian Civil Law Code is referred to as UCC. A UCC applies the same body of secular civil laws to all individuals, regardless of their geographic location or religious affiliation. This takes precedence over citizens' rights to be subject to various personal laws depending on their race or religion. Most contemporary countries have such codes in existence. Undoubtedly, the concept of UCC is mostly a product of India's independence¹³.

Legislative Efforts Made on the Part of Government

Even still, it was correctly noted in the Constituent Assembly that not all Hindus supported the UCC. However, UCC has always been connected in Indian consciousness to Muslim resistance. They believed that their religion really included the personal laws of succession, inheritance, and so on. If such were the case, Article 14 of the Constitution would never provide Indian women the same rights as males. Article 15(1) states that "no citizen shall be subjected to discrimination by the State on the basis of religion, race, caste, sex, or any combination of these."¹⁴ Hindus are, on the whole, more receptive to the contemporary conception of uniform law. A number of laws pertaining to coparcenary inheritance have been passed since the British period; the most current update to these rules is found in the Succession Act.

During British Period:

An effort was made to move personal laws into the civil domain by the Indian Succession Act of 1865, which was also among the first laws to guarantee women's economic security. Christian marriages were reformed by the Marriage Act of 1864. The Hindu Widow Remarriage Act of 1856, the Married Women's Property Act of 1923, and the Hindu Inheritance (Removal of Disabilities) Act, 1928 were among the laws that were passed that were advantageous to women. The All India Women's Conference (AIWC) expressed dissatisfaction with the male-dominated Legislature in 1933 when Lakshmi Menon said, "If we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law." The male members of the Legislative Assembly will not assist us in implementing any significant reforms that will be advantageous to us. The Karachi Congress Resolution, which promised gender equality, served as the foundation for the women's groups' demand that a UCC replace the current personal laws.

First passed in 1872, the Special Marriage Act offered Indian individuals another choice—a legal marriage. Because it was exclusive to Hindus and required participants to leave their faith, its applicability was restricted. Following the subsequent Special Marriage (Amendment) Act, 1923, Jains, Sikhs, Buddhists, and Hindus were allowed to marry in accordance with their own personal laws.

After British period:

Hindu Code of Law: This bill was intended to establish a unified civil code, as desired by women members, supporters, and Jawaharlal Nehru, the first prime minister of the Indian republic. The Hindu law itself drew a lot of criticism, with the primary points of contention being those pertaining to divorce, monogamy, women's rights as coparcenaries, and inheritance to daughters.

The Hindu Code Bill was unable to stop the pervasive prejudice against women. Equal rights for both couples were granted by divorce laws, although males began most of its implementation. Women belonging to other groups continued to be subservient, since the Act was only applicable to Hindus. For example, Muslim women were not allowed to inherit land used for agriculture under Sharia law. Although Nehru acknowledged that the bill was not

flawless, he was hesitant to make significant revisions that may enrage certain populations. Although he agreed that it lacked any significant innovations, he nevertheless thought it was a "outstanding achievement" for his day.

Any Indian citizen, regardless of faith, is able to get into a civil marriage under the Special Marriage Act of 1954, which allows Indians to marry nonreligious people. All of India was subject to the legislation, with the exception of Jammu & Kashmir. The statute was almost similar to the Hindu Marriage statute of 1955 in many ways.

Muslims were able to wed under the Special Marriage Act and keep the safeguards that were normally advantageous to Muslim women but were absent from the personal law. Polygamy was outlawed by this measure, and the Indian Succession measure—rather than the corresponding Muslim Personal Law—would control inheritance and succession.

Following the Hindu Code Bill's passage, there were two main groups to whom India's personal laws applied: the general Indian populace and the Muslim population, whose rules remained unaltered. It wasn't until the Shah Bano case in 1985 that the regular disputes between secular and religious authorities on the creation of a universal civil code began to decline. The 73-year-old Bano asked her husband, Muhammad Ahmad Khan, for maintenance. After forty years of marriage, he had granted her a unilateral divorce by triple Talaq, or "I divorce thee," and had stopped paying her monthly support. This kind of divorce was legal under Muslim personal law. In 1980, a municipal court rendered a ruling granting her support. Khan, a lawyer by profession, appealed this ruling to the Supreme Court, arguing that he had complied with all of his legal duties under Islamic law. Under the Criminal Procedure Code's "maintenance of wives, children, and parents" clause (Section 125), which applies to all citizens regardless of faith, the Supreme Court cleared her in 1985. It is also recommended that a UCC be established. In addition to her case, in 1979 and 1980 two other Muslim women had obtained maintenance under the Criminal code.

A Muslim parliamentarian who is independent put up a bill in the legislature to safeguard their personal law. In 1986, the Muslim Women's (Protection of Rights on Divorce) Act was created, providing maintenance under Criminal Procedure Code Section 125, which did not apply to Muslim women.

A Critical Review on Available Laws

There are no specific laws pertaining to this subject since the UCC is a component of state policy rather than a basic right. A unified civil code provision is provided by some statutes and laws.

With the Shah Bano ruling, the court made a fruitless effort to advance UCC. However, the Indian government moved forward and passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which made sections 125–127 of the Criminal Procedure Code optional for divorce. Given that Muslim women are marginalized in society, this legislation cannot be considered socially legitimate. And in order to do this, Article 44 requires the State to make every effort to ensure that the nation's many personal laws—which must all be consistent in their application—are acknowledged. Article 44 of the Indian Constitution mandates that the State work to ensure that every person has access to a UCC throughout the country. Even after more than 70 years, we still haven't reached the point of understanding necessary to recognize and abide by the Constitution's directive.

Time wasted during the last fifty years has been depressing. No pertinent data regarding the many semi-visible groups and communities has been gathered, and the general public has not been introduced to the concept of the UCC. There isn't a draft legislation for it. The terms UCC have not been adequately thought out. Which would we prefer—a Common Code or a Uniform Civil Code? Do these two have the same characteristics? Do we want to create a Common Code that incorporates all of India's current personal laws that work well? We haven't given these questions much thought. Is there a "perfect" current legislation that might serve as a model for the creation of new personal laws?

The Constitution's provisions lack clarity. While the preamble declares India to be a secular state and adds the term "secularism" through the 42nd Amendment, the state must interfere in its citizens' personal laws for the purpose of governing, even though it is a secular state and shouldn't. Furthermore, Articles 25 and 26 of our Constitution provide freedom of conscience, as well as freedom to practice, profess, and propagate any religion. Additionally, Article 44 has been very deftly drafted such that it does not state that the new UCC should be imposed on all people and that all personal laws should be repealed. The study discovered that there are a lot of divisive discussions and viewpoints on UCC. Indian society is not developed enough to make use of UCC.

Judicial Interpretation With Respect To Uniform Civil Code And Secularism

The goal of UCC under Article 44 remains unfulfilled even more than 50 years after the Constitution's passage. Nevertheless, as shown by the Supreme Court's periodic declarations, attempts in this field persisted.

The Supreme Court said in the Shah Bano's case, *Muhammad Ahmed Khan v. Shah Bano Begum*¹⁵, that "it is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Muslim women would be entitled to maintenance if the amount they received as "dower" under personal law is insufficient for their subsistence, in spite of section 127 of Cr.P.C. 1973, which states that if a woman has received an amount under personal law, she would not be entitled to maintenance under section 125 of Cr.P.C. 1973 after divorce. Despite receiving harsh criticism from Muslim fundamentalists, the ruling was seen as a liberal reading of the law that was necessary for gender fairness. Later, the Muslim women's (Protection of Rights on Divorce) Act, 1986 was enacted by the Central Government in response to pressure from Muslim fundamentalists. This act denied Muslim women the right to maintenance under section 125 of the Criminal Procedure Code. It was properly criticized by the campaigners as "definitely a retrograde step." That further demonstrated how women's rights are not given much emphasis, especially in India, a secular state. Women's rights were therefore subordinated to the autonomy of a religious organization.¹⁶

In *Sarla Mudgal (Smt.), and others v. Union of India and others*¹⁷, *Kuldeep Singh, J.* held that "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Art. 44." He also directed the Government to implement the directive of Article 44 and to file an affidavit outlining the steps taken in the matter. Consequently, the Supreme Court asked the Indian government, acting via the Prime Minister, to revisit Article 44 of the Indian Constitution and work at securing a UCC for all Indian people throughout the nation. In addition, he recommended forming a commission to draft a Conversion of Religion Act. While concurring with *Kuldip Singh, J.*, *R.M. Shahai, J.* also said that "Ours is a Secular Democratic Republic." The foundation of our civilization is religious freedom. However, religious practices that sacerdotalize civil and material liberties and violate human rights and dignity constitute oppression rather than liberty.

The Court maintained the legality of Sections 3 and 4 of the Muslim Women (Protection of rights on Divorce) Act, 1986, ruling that they did not violate Articles 14, 15, and 21 of the Indian Constitution in *Danial Latifi and Others v. Union of India*¹⁸. She is not entitled to support under section 125 of the Cr.P.C. since, according to section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986, a Muslim husband is required to provide reasonable and equitable provisions for his divorced wife's future, including maintenance. A divorced Muslim woman who is unable to support herself after the iddat period may file a maintenance claim against her family or the wakf Board under section 4 of the Act.

On behalf of a five-judge panel that includes *Patnaik, Mohapatra, Doraiswamy, and Patil, J., Rajendra Babu, J.* And he himself noted: "We have to take into account the social factors that are common in our culture when interpreting the laws when marriage relationships are concerned. It is a tiny consolation to note that people of all faiths agree that such a lady deserves financial support for her way of life and that any assistance that upholds fundamental human rights to ensure gender and social fairness is welcome.

In *John Vallamattom v. Union of India*¹⁹, the Supreme Court upheld the constitutionality of section 118 of the Indian Succession Act, 1925, in response to a public interest lawsuit filed by John and other Christian community members. The court also declared that the section violated article 14 of the Constitution and, in light of the inconsistencies between the marriage laws of different religions, stressed the need for a common civil code passed by Parliament. A three-judge bench emphasized that there was no "necessary connection" in a civilized society between religious and personal laws, and regretted that Article 44 of the Constitution—which allowed the state to "Endeavour" to secure a UCC for its citizens across India—had not been impacted. The Court went on to say, "Parliament still has to intervene to frame a UCC for the Nation. By eliminating irrational contradictions, a UCC will advance national integration efforts. After discussing the Supreme Court's opinion on the application of the UCC, it may be claimed that Art. 44 must be construed in a way that preserves the plurastic nature of the Indian community. The focus should be on gender fairness as opposed to homogeneity. Despite the fact that the Supreme Court has not yet explained Art. 44. Without defining what a UCC would include, the Court ordered the Parliament to create one in all of his rulings.

The term "uniform," however, should not imply that all laws are the same; rather, it should imply that all laws are comparable, especially when it comes to equality and gender justice.

Suit Shayra Bano v. Indian Union²⁰: In a recent ruling, the Supreme Court outlawed the Talak-ul-Biddat practice while concurrently reviewing six petitions pertaining to the same issue. In terms of their fundamental human rights and the equality that the Indian Constitution guarantees, Muslim women have won. However, the ruling cannot be strictly interpreted in favor of UCC. The primary arguments for rejecting the aforementioned kind of talak have been its non-mandatory and unauthorized practice as per the relevant Muslim holy texts. The court avoided delving into the issue of a single, constitutionally-mandated fundamental right breach. The answer seems to be negative when it comes to the topic of whether a personal legislation may infringe a citizen's fundamental right. Given these court rulings, each personal law provision must be examined in a unique and focused manner, taking into account the relevant religious texts rather than the Constitution.

II. CONCLUSION

Following an analysis of the data, rulings, and social history of our country and the development of a comprehensive strategy for UCC, the following conclusions may be drawn. Certain clauses of the Constitution impede execution. For example, Art. 44 discusses the UCC for citizens, yet Art. 37 declares that "the provisions of Part 4 shall not be enforceable in any Court." The sentence "...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" seems to have established a duty on the part of the State to apply these principles in the creation of laws. Thus, because it has become essential to the nation's government, we might conclude that Art. 37 requires the State to provide UCC for its inhabitants. It seems to be an obligation against which the State has no legal recourse in the event that the duty is broken.

The word "secular" is used in the preamble of the Constitution, which also states that as the state is secular and grants individuals the freedom of religion, it should not meddle in an individual's religious matters. However, since religion is a matter of personal faith and cannot be combined with secular activities, we can argue that individual rights have no bearing on India's unity and integrity. This is because the State may regulate religion through the enactment of laws, as the Supreme Court has already held in the case of S.R. Bommai v. Union of India.

We may sum up by arguing that the UCC equates to equal laws for all societal groups. India's population must be regulated under a single body of laws. UCC is essential for both secularism and national unity. Because our society does not meet the necessary standards to make use of the "UCC," UCC is still pending. What is the cause, considering that India is a multireligious nation, the researcher said. There are many different cultures, and these cultures, as well as the tendencies and behaviors of their individuals, are very diverse. Although we claim that India provides Unity in Diversity, this is not always the case; otherwise, UCC might have been implemented much earlier.

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