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UCC: The Past, the Present, and the Future

ANKIT SINGH¹ AND NISHCHYA²

ABSTRACT

The Uniform Civil Code, or the UCC, has recently been the subject of debates and discussions. The present paper seeks to provide insights into the UCC in India, tracing its roots, latest developments, and implications. The author, through this paper, has tried to conduct a comparative overview of UCC developments in other modern democracies, such as, the United States of America, France, and Turkey, thereby shedding useful insights on the diverse approaches to the complex provision in question.

Additionally, the paper also has tried to explore the rationale behind implementation of UCC, drawing on international instruments such as Vienna Convention on the Law of Treaties (VCLT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Human Rights Committee (HRC) report.

Further, the author, has also delved into various instances, explicit or implicit, found under Indian Constitution, apart from Article 44, wherein the references to the topic in question has been found.

Finally, the author has concluded by suggesting how this dream can be made a reality. Also, the author has tried to provide valuable insights that can serve as helpful tools for realising this distant dream, which seems to be lurking even in the contemporary world.

I. INTRODUCTION

The Uniform Civil Code (hereinafter UCC) has recently been hitting the news headlines in India. In the primaevial period customary rules and principles were used to administer the customary laws. During the reign of the Mughals, there are shreds of evidence which prove that Quazis used to administer their laws as per their customary beliefs however, there are few evidences proving that the same was followed in the case of Hindus. However, with the advent of the British, these problems started to become further complicated as the British started governing Indians on the basis of customary laws and followed the policy of passive interference in divorce, marriage, inheritance, and succession. In 1772, Warren Hastings was the first who provided unvarying law to govern the mofussil area of Bengal, Bihar, and Orissa especially concerning civil cases wherein the laws were to be made applicable to each individual in consonance with their religion and practices. In 1781, the Supreme Court which was

¹ Author has Graduated from KLE Society's Law College, India.

² Author has Graduated from Gujarat National Law University, India.

established in 1774 in Calcutta, classified customary laws based on three religions namely – Hindu law, Muslim Law, and Christian Law. The first two were applicable to Hindus and Muslim in respect of their religion whereas the Christian law was made applicable to all those who were not Hindus or Muslims example the Parsis who were earlier governed in consonance of their customary laws were now have to follow the Christian law. However, in criminal matters English law was given preference over the other personal laws.

Prior to independence Indians were governed on the basis of *Mitakshara* and *Dayabhaga* law these laws were not applied uniformly over all Hindus this finally led to coming up of various sub schools of thought into existence under *Mitakshara* law. Thus, it led to creation of multiple diverse practices under Hindu law which governed Hindu religious practices. So far as Muslims are concerned they too were divided into two distinct sects popularly called *Shias* and *Sunnis*, even their beliefs, although derived from a common source i.e. Kuran, differed while at the time of its application. In the same manner, even Christians were subdivided into two forms *Catholics* and *Protestants* which had their own religious principles to govern them. This approach led to the façade of multitudinous contemporary customary practices has been continuing till date.

While at the time of constitution framing the constituent assembly deliberated extensively on the issue of UCC. The framers were of the firm opinion that principles of equality and social justice by way of UCC would be instrumental in promoting these ideals by providing a common set of laws that are not influenced by religious considerations. Also, one of the contentions of the constituent assembly was that India is a diverse country and home to various religions therefore not having a UCC will promote regionalism thereby hampering the idea of national integration. On the other hand, some were of the opinion that India being a pluralistic society, there cannot be one common law to govern all.

KM Munshi, member (drafting committee), stated – “*Nowhere in advanced Muslim countries the personal laws of each minority has been recognised as so sacrosanct as to prevent the enactment of UCC. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further when the Shariat Act, 1937 was passed, or when certain laws were passed in central legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied*”³.

Even Dr. BR Ambedkar stated that he was astounded to find out that some members of the constituent assembly believe that India being a vast country cannot afford to have a one UCC.

³ VN Shukla, Constitution of India 307.

He, while expressing his dissatisfaction, stated that Hindustan already has a uniform code in plethora of matters for instance – civil procedure, criminal procedure, arbitration, property matters, sale of goods, negotiable instruments, and various others.

After, Independence, Ambedkar was in favour of enacting an extensive code for Hindus. However, the same was opposed by Dr. Rajendra Prasad, it was due to continued opposition of Rajendra Prasad which led to resignation of B.R. Ambedkar from cabinet, as a result, Hindu Laws were formed in a common legislation called Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956.

II. OBLIGATIONS UNDER INTERNATIONAL LAW

Art 27 of the Vienna Convention on Law of Treaties enshrines that the states which are signatories to international instruments must take necessary measures for implementation of treaty.⁴ Also, the term “pacta sunt servanda” which is widely popular in international agreements provides that a state is bound to obey the pact and is duty bound to implement them thereby implying that the state must take proactive steps by way of enacting suitable domestic measures, including legislation, to ensure compliance with their international commitments. The same is also explicitly expressed in Art 51, 73, and 253 of the Indian constitution.

Thus, in context of UCC, India being a signatory to various legally binding provisions of Committee on the Elimination of Discrimination Against Women (hereinafter CEDAW) and United Nations Committee on The Elimination of Discrimination Against Women is bound to enact a suitable legislation to give effect to its provisions. It is pertinent to note that the eradication of discrimination against women in terms of marriage and family relations is covered under Art 16 of the CEDAW. It demands assuring parity in areas like the freedom to select one's partner, the same rights and obligations through marriage and its termination, and the defence of women's property and inheritance rights. Further, in its General Recommendation No. 29 (2013) on the “Descriptive Note on General Recommendation No.21 on Equality in Marriage and Familial Relations,” the CEDAW Committee stresses the necessity for nations to rewrite or do away with sexist laws and practices that uphold discrimination based on gender in relationships and familial matters. It urges governments to take legislative and other measures

⁴ Berger, K.P. (2020) *Vienna Convention on the law of treaties of 1969, translex*. Available at: https://www.trans-lex.org/500600/_/vienna-convention-on-the-law-of-treaties-of-1969/ (Accessed: 07 December 2023).

to achieve parity within personal laws.⁵

Also, the Human Right Committee (HRC) in its report (submitted on 30 July 1997) explicitly mentioned that in India women are still not freed from the clutches of age old practices and discrimination, it also further stated, women are still subject to various discriminatory personal laws which are based on such religious norms which in no way aim to provide women equality in respect of marriage, divorce, succession, and inheritance rights. Therefore, the HRC is not in favour of such gross violation of women's rights and has continually recommended the Indian government that "*efforts be strengthened towards the enjoyment of their rights by women without discrimination and personal laws be enacted which are full compatible with the international covenant*".

Till date there are several customary practices which are derogatory to women and no effort since India's independence has been made to amend these laws in or to enact new legislation which are in harmony with the essence of the constitution.⁶ Rather, the Indian government has time and again reiterated its policy of non-interference in religious matters.

III. CONSTRAINTS IN FOLLOWING UCC

J. Nehru was the first prime minister to recommend the need for a UCC to provide uniformity in all rules and regulations however, due to opposition of some members the UCC could not be enacted and it remained confined within the four corners of the DPSP of Indian Constitution, thereafter, no government, either of a state or at the centre, made any effort of implementing the UCC.

However, in 2014, the Modi government had explicitly mentioned in its manifesto the need to integrate all religions and govern them in consonance with a common law uniformly applicable to all individuals. He also propounded the term "one nation one law".⁷

⁵ 1. United Nations, Report of the Committee on the Elimination of Discrimination Against Women , Supp. No. 38, A/55/38, 22nd Session 17 Jan-4 Feb 2000 and 23rd Session 12-30 June 2000, General Assembly Official Records, New York, 2000, at 8.

⁶ Salaria, S. (2023) *Muslim clergy staunchly oppose UCC, but women's organisations see chance to get 'gender-just laws'*, *ThePrint*. Available at: <https://theprint.in/india/muslim-clergy-staunchly-oppose-ucc-but-womens-organisations-see-chance-to-get-gender-just-laws/1661506/> (Accessed: 07 December 2023).

⁷ *BJP manifesto pledges good governance, talks of constructing Ram Mandir, abrogating Article 370* (2014) *The Indian Express*. Available at:

IV. INSTANCES OF UCC

It is well known that India is a majorly diverse country. It has always tried to uphold the values which favour Unity in Diversity. Around the globe, the spirit of tolerance shines above all over the world and is considered its primary forte.

United States of America

In the US, states and countries are considered separate entities. States are, to some extent, autonomous and can enact their own legislation thereby making them independent legal entities. States in the US usually have their own Supreme Courts, wherein the practices and legal conventions are followed. Although, it is to be borne in mind that, there are various uniform laws to govern civil laws in states in a way that is common throughout the nation but the issues which are federal in nature or which concern the security of nation as a whole are decided by the Federal Supreme Court. Therefore, US does not have a UCC to govern its subject's religion, inheritance, and succession-related matters however, some states like California have their own law which is applicable to all citizens, irrespective of their religion.

France

The extensive Civil Code of France, which was first adopted in 1804 and has since undergone multiple modifications, is well-known worldwide. Irrespective of religious affiliation, the French Civil Code provides a consistent set of laws controlling different issues, such as marriage, divorce, inheritance, and property rights. It encompassed a wide range of topics including property, commodities, usufructs, easements, succession, wills, gifts, contracts, and quasi-contracts, superseding both common law and pre-existing legal rules. The French Code aims to strike a balance between privilege and equality, as well as between traditions and the law.⁸

Some important provisions of the code are:

1. Art 1 – Lays emphasis on equality before law and provides that all individuals are subject to same legal rules irrespective of their birth, race, or religion.

<https://indianexpress.com/article/political-pulse/bjp-unveils-poll-manifesto-includes-contentious-issues-like-ram-temple-and-article-370/> (Accessed: 07 December 2023).

⁸ Berger, K.P. (2016) *French Civil Code 2016, translex*. Available at: https://www.translex.org/601101/_/french-civil-code-2016/ (Accessed: 07 December 2023).

2. Art 212 - Highlights the principle of mutual respect, support and loyalty between spouses. It promotes the idea of equality and cooperation between spouses within marriage.
3. Arts 1387 -1388 - Matrimonial property regimes are the theme of these Arts. They offer advice on the various alternatives open to spouses for handling their property while they are married, including community property, separate property, and other contractual arrangements.
4. Arts 215-227 - The legal framework of marriage is covered in these parts, which touch on a number of topics including consent, legal ability, formalities, and voidable marriages.
5. Arts 311-357 - The laws governing intestate succession, testamentary freedom, and the protection of certain family members' rights in the event of inheritance disputes are covered in these sections, which are concerned with inheritance laws.

Turkey

Although, Turkey does not have a unified civil code however, Turkey follows culmination of both civil as well as Islamic law, wherein some matters are governed by distinct laws. Some important provisions relating personal matters in Turkey⁹ are:

1. Art 10-11 states about prerequisites of a valid marriage. It essentially talks about consent, capacity, and other legal impediments.
2. Art 440-461 talks about distribution of property among heirs depending upon their relationship with the deceased and other factors.
3. Art 161-166 provides the grounds for dissolution of marriage. It provides that in case of adultery, cruelty, or desertion the marriage will be irrevocable and final.
4. Art 335-339 covers the aspects of child custody, child support, division of property in case of divorce.

Thus, UCC is not common in developed countries but also the countries which are totally Islamic or in countries which have a predominantly Islamic identity. Variety of countries have adopted UCC not in order to ensure a common framework including the countries following

⁹ (No date) *Turkish Civil Code (English translated version) | practical law*. Available at: [https://uk.practicallaw.thomsonreuters.com/1-635-9389?contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/1-635-9389?contextData=(sc.Default)) (Accessed: 07 December 2023).

Islam. They have chosen to maintain a distinct legal system for different religious communities thereby upholding the basic human values over discriminatory and bigoted customs and practices.

V. UCC UNDER INDIAN CONSTITUTION

India is a nation which truly fits under the definition of *unity in diversity* as it is home to various religions some of which owe its birth to India. As described earlier, after the enactment of Indian Constitution there were efforts made by few members of the Constituent Assembly to give flesh and blood to the scheme of UCC by integrating it under Part III of the Indian Constitution i.e., under Fundamental Rights, however, owing to widespread opposition from a few members the same could not be materialised fully under the constitution but was confined to rather a small part i.e., under part IV of the Constitution, popularly called as DPSP, specifically under Art 44.¹⁰

Nonetheless, few instances, not directly, are found around the constitution favouring the implementation of UCC. They are mostly inculcated in the “preamble, fundamental duties, fundamental rights, directive principles of state policy”.

Thus, the provisions under the constitution can be grouped under four distinct categories:

1. Preamble
2. Fundamental Duties (FD)
3. Fundamental Rights (FR)
4. DPSP's

Preamble

The 42nd Amendment Act of 1976 inserted the term "secular" into the Preamble of our Indian Constitution. The term "secular" denotes the absence of a religion that is subsidised by the state. Under Indian law, the state is required to respect all faiths equally, yet in reality, there are certain discrepancies between various faiths in the Country. The Constitution of India creates a wall among the government from religions. In order to emphasise that no particular religion in the state will be given any state support or funds and that nobody living in the state will be dealt distinctly or subject to discrimination merely because they follow a distinct belief, the word "secular" was added to the preamble of the Indian Constitution in 1976.

¹⁰ Law & Justice2.pmd (indiacode.nic.in)

The apex court decided in *Bijoe Emmanuel v. State of Kerala*¹¹ ruled that religion encompasses practises, ceremonies, and religious activities that adhere to the principles of the system as well as faith and belief. Courts here determined whether governmental restrictions on the practice and spread of religion fulfil the test of public order, morality, and health, and if not, whether they should be sustained. This evaluation goes beyond determining whether a religious practise is an important component of a religion. In the present case, it was held that not singing of the national anthem was prohibited by their religion hence, the students cannot be compelled to sing the same.

FD: FD's were inserted to Indian Constitution by 42nd CAA¹². Art 51-A(e)¹³ of the same casts a duty upon an individual of the duty to promote "harmony and the spirit of common brotherhood" among all citizens of India, transcending religious, linguistic, regional, or sectional diversities, while also denouncing practices that undermine the dignity of women. However, the prevailing reality reveals a disparity, as personal laws encompass certain practices that relegate women to a subordinate position in relation to men.

Fundamental Rights

The FR's are enshrined under Part III of the constitution running from Art 12 to 35. These rights are justiciable in nature implying that their violation can entail recompense under the constitution specifically under Art 32 and under Art 226 wherein an individual can approach the appropriate forum to set her/his rights straight. One may state that there is no provision in this part which directly talks about UCC however, it may be inferred by necessary implication. Art 14, for instance, explicitly states that the "state cannot deny anybody equality before the law or equal protection under the law", it implies that whenever the state has recourse to personal laws, practices, beliefs, or customs in case of customary laws, it tantamount to abuse of Art 14.

Further, Art 21¹⁴ states that everyone has the right to life and personal liberty which has to be used in compliance with the law and the legal procedures set out. Also, the apex court in its variety of decisions have held that the procedures must be just, fair, and equitable, and in context of family, it can be stated, that it is a grouping wherein constraints may be levied on the basis of public order, decency, and morality.

State may also, either directly or by necessary implication, implement the constraints. For

¹¹ 1987 AIR 748

¹² Constitutional Amendment Act, 1970

¹³ INDIA CONSTI. Art. 51A.

¹⁴ INDIA CONSTI. Art. 21.

instance, Art 25(1)¹⁵ entails freedom of religion, Art 25(2)(b) allows state to pass any law providing for social wellbeing and reform. Also, the state cannot be permitted to provide shelter to personal laws as under Art 29(1)¹⁶ personal laws are not prime matters and also because it is the duty of the state to enact laws for overall welfare of all individuals living in a society.

Even the Constituent Assembly debates point towards the power of state to bring in a law under Art 44 and the same can be defended by it in consonance with Art 14 if there are adequate whys and wherefores with respect to societal and cultural dimension. In *state of Bombay v Narasu Appa Mali*, the Bombay High Court stated that personal laws do not fall under the expression “law in force”, hence, they are immune from being declared a nullity under Part III. Further, in the same case, Gajendragadkar J. stated that Art 13(1) is only applicable to “what may be defined as statutory legislation”

DPSP

The DPSP's run from Art 37 to 51 under Part IV of the Constitution. These are acknowledged under the constitution as non-justiciable rights hence, an aggrieved individual is not allowed to knock door of the court for their recourse and get recompense, nonetheless, these act as a guiding lamp for policymakers.

Art 44¹⁷ of the Indian Constitution contains an explicit provision empowering the state to endeavour towards the attainment of a uniform civil code (UCC). This provision underwent extensive deliberation and discussion before being included in Part IV of the Constitution. However, certain sections, as previously discussed, expressed opposition to its inclusion.

Art 44¹⁸ in conjunction with Art 12, explicitly delineates the responsibility not only of the legislature but also of all government to actively strive for the establishment of a UCC that is common to all citizens of the nation, thereby fostering the progressive development of our democratic system. The fundamental objective of our democratic framework is to dismantle barriers based on religion, caste, and creed, and construct a robust legal framework that upholds the rule of law within Indian society.

Consequently, the inclusion of Art 44¹⁹ in the Constitution seeks to facilitate the transformation of a heterogeneous society into a homogeneous one. It is imperative to acknowledge that even after attaining independence, India remained divided along religious and caste lines. The

¹⁵ INDIA CONSTI. Art. 25.

¹⁶ INDIA CONSTI. Art. 29.

¹⁷ INDIA CONSTI. Art. 14.

¹⁸ Ibid.

¹⁹ INDIA CONSTI. Art. 44.

persistence of such segregation, characteristic of a heterogeneous society, necessitated the determined efforts of our esteemed constitutional framers to incorporate Art 44 into our national charter, with the intention of engendering an environment of uniformity.²⁰

Lately, the DPSP has been persistently acquiring fame and the same has been acknowledged by the apex court as well as by legislature. The importance of DPSP was stressed by Mathew J. in the following confrontations ““There are rights that inhere in human beings because they are human beings—whether you name them natural rights or by any other nomenclature is immaterial.”. The prime objective of the Constitution is to safeguard the natural rights with an objective to secure justice that of political, economic, and social. Therefore, these rights, contained under part IV, cast a duty upon the state to enact laws safeguarding the interest of a people as a whole.

VI. RECENT STEPS

The government of the Republic of India has undertaken significant steps in the direction of effectuating a Uniform Civil Code (UCC). It is noteworthy that in the year 2016, the Law Commission of India diligently issued a comprehensive report encompassing a plethora of prudent recommendations, thereby advocating for the requisite alterations to be made to the prevailing personal laws. These commendable proposals aptly encompassed an array of pivotal facets, including but not limited to the imperative aspect of raising the prescribed minimum age of marriage for both male and female individuals, thereby ensuring the attainment of an enhanced level of protection for the vulnerable parties involved. Additionally, the proposed modifications also unequivocally advocated for the absolute abrogation of the archaic and discriminatory practice of polygamy, whilst concurrently striving towards establishing gender parity by advocating for the unequivocal recognition and enforcement of women's equal entitlements to property and inheritance rights, thus fostering an environment of social justice and equitable treatment.

Furthermore, in the recent year of 2023, the government has embarked on a series of concerted efforts aimed at accelerating the progress towards the eventual realization of the Uniform Civil Code (UCC). Thus, it can be reasonably posited that with the favourable trajectory, the prospect of UCC becoming a tangible reality in India is not far-fetched, wherein the outmoded and prejudiced aspects of existing laws will be unequivocally discarded. Nevertheless, given the intricate tapestry of India's diverse societal fabric, there remains a lingering scepticism among

²⁰ Rajan Pillai, Framing of a Uniform Civil Code and Some Policy Issues, Published by Centre for Social Studies, at page 333.

certain quarters regarding the unqualified success and widespread acceptance of the UCC.

VII. CONCLUSION AND SUGGESTIONS

Thus, finally, from the above discussion, we can state that, the enactment of a Uniform Civil Code (UCC) in India is quintessential to realize the dream of a harmonious and egalitarian society. The presence of diverse personal laws based on religion, caste, and other factors has perpetuated inequality and hindered the principles of justice and gender equality. A UCC would provide a common set of civil laws applicable to all citizens, irrespective of their religious or cultural backgrounds. This would promote social cohesion, equal rights, and the dignity of individuals, especially women, by eliminating discriminatory practices entrenched within personal laws.

Furthermore, a UCC would align India's legal framework with its progressive aspirations as a democratic nation. It would reinforce the principle of the rule of law, uphold individual freedoms, and contribute to the strengthening of the nation's secular fabric. By removing legal distinctions based on religion, caste, and creed, a UCC would foster unity, social integration, and mutual respect among citizens, ultimately bolstering the nation's social and political cohesion.

While implementing a UCC, engaging in thoughtful and inclusive deliberations is crucial, considering diverse perspectives and sensitivities. The process should involve consultation with all stakeholders, including religious and community leaders, legal experts, and civil society organizations. Sensitivity towards cultural diversity and the protection of individual rights should guide the formulation of a comprehensive and just UCC that respects the principles of constitutionalism and human rights.

In light of these considerations, it is imperative for the Indian government and society at large to earnestly pursue the enactment of a Uniform Civil Code. By embracing this transformative step, India can demonstrate its commitment to equality, justice, and the fundamental rights of all its citizens, ushering in a new era of unity, inclusivity, and progress.
