

Uniform Civil Code in India: Impact On Its Implementation

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Abstract

“Secularism is a religion, a religion that is understood. It has no mysteries, no mumblings, no priests, no ceremonies, no falsehoods, no miracles, and no persecutions”

Robert Green Ingersoll

The paper briefly talks about various aspects and the essentials of the Uniform Civil Code. The paper talks about concerning factors that gave rise to the requirement for the implementation of Uniform Civil Code. It mainly aims to replace Personal Laws based on the scriptures and customs of each major religion in India with a common set of rules governing every citizen. Personal Laws are distinguished from Public Law and it basically covers marriage, divorce, inheritance, adoption, succession and maintenance. The paper briefly deals about challenges to implementing the Uniform Civil Code and its pros and cons of Uniform Civil Code. The paper discusses about judicial activism involved in personal laws and judgments of the Supreme Court where the court has emphasis for the need for the implementation of Uniform Civil Code. The paramount objective of this paper is to understand the detailed concept of Uniform Civil Code i.e. its beginning, contemporary developments, advantages, disadvantages and Role of Judiciary. Thus, at last in the paper, critical analysis and conclusion has been provided. In the process of making this paper, several journals, books and articles were referred and taken into consideration.

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1. INTRODUCTION

A UCC denotes unifying all the “personal laws” to have one set of secular laws dealing with to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code has not been spelt out, it should apparently incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are rearward. The “directive principles” enshrined in the Constitution says: “The State shall Endeavour to secure for the citizens a UCC throughout the territory of India.” As the Constitution itself

makes clear, the directive principles “shall not be enforceable by any court”. In spite of, they are “fundamental in the governance of the country”. This shows that although our constitution itself says that UCC should be implemented in some manner but its implementation is not obligatory¹. Hence, the wrangle on having a UCC for India still continues. The merit of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice. After the **cancellation of Article 370**, the central family law Acts were extended to Jammu and Kashmir. Although, this is another step towards effecting Uniform Civil

Code throughout India, still a long distance is to be protected in this pursuit. The basic ideology behind the formulation of a civil code is to end discrimination based on religion. There is also need for a political harmony to implement the uniform civil code. With the enactment of a Uniform Civil Code, secularism will be strengthened, much of the present day separation and disagreement between different religious groups in the country will disappear and India will emerge as much more cohesive and integrated nation. The present research paper endeavours to discuss the impact of implementation of the Uniform Civil Code.

2. HISTORICAL BACKGROUND: UNIFORM CIVIL CODE HISTORY

India's colonial era saw debates of a uniform civil code. As a result, it has a long history and got its start when the British government submitted a report in 1835 calling for the codification of Indian laws in a standard manner to assist the administration of justice. Prior to independence (during the colonial era), criminal laws were codified and made universally pertinent. While the personal laws were still governed by several community-specific ordinances. The Indian Constitution was written during the Post-Colonial period (1947–1985). The opposition from religious fanatics and the ignorant masses was a major factor in the notable leaders' campaign for a uniform civil code². The Hindu Code Bill, Succession Act, Hindu Marriage Act, Minority and Guardianship Act, and Adoptions and Maintenance Act, to name a few, were some of the reforms that were fulfilled at that time.

3. OBJECTIVE OF PAPER

- To study the scope of Uniform Civil Code.
- To study the modern issues related to Uniform Civil Code in India.
- To analysis the implementation impacts of Uniform Civil Code in India.
- To examine the pros and cons of Uniform Civil Code.
- To identify the factor which is barrier to the implementation of Uniform Civil Code.

4. RESEARCH METHODOLOGY

The researcher has pursued secondary data collection. This is a doctrinal study. The researcher has also consumed books, commentaries, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made general use of Case Laws in this paper, so as to recognize a trend in the judicial pronouncements.

4.1 Hypothesis

Whether a uniform civil code can be implemented in India and it will also be beneficial for the nation and it will not violate the right to profess one's religion.

4.2 Secularism V. Uniform Civil Code

The Preamble of the Constitution deals that India is a Secular Democratic Republic. This means that there is no State religion. A secular State shall not discriminate against people on the ground of religion. A religion is only concerned with relation of man with God. It means that religion should be not interfering with the ordinary life of an individual. The process of secularization is confidentially connected with the goal of uniform civil code like a cause and effect. In *S.R. Bommai v. Union of India*, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be assorted with secular activities can be regulated by the State by enacting a law³. Articles 25 and 26 assurances right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to standardize or restrict any economic, fiscal, political or other secular activity, which may be related with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not inadequate to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the vital parts of religion. Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26. Article 44 is based on the concept that there is no required connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, consequently, law can regulate them. No religion permits deliberate distortion. The UCC will interfere only in matters of inheritance, right to property, maintenance and succession, there will be a common law. Justice Khare, in the recent case, said "It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution."⁴ The Chief Justice also advised that any legislation which brought succession and like matters of secular character within the ambit of Articles 25 and 26 is an uncertain legislation. Article 25 converse right to practice and profess religion, while Article 44 deprives religion from social relations and personal law.

4.3 Challenges in the implementation of Uniform Civil Code

- The customary practices among societies vary a lot. The vast diversity of the personal laws, along with the devotion to which they are observed to, makes uniformity of any sort very difficult to achieve. It is very tough to find a common ground between different communities.
- There is an apprehension that the uniform civil code may be in conflict with the fundamental rights of freedom of conscience of free profession, practice and propagation of religions (Article 25), and the freedom to achieve religious affairs (Article 26).
- This is one of the most insignificant and obvious hurdles to bring up the Uniform Civil Code. The

fundamentalism which is deep-rooted in many of the religions in India doesn't seem to vanish even in the 21st century.

- The government may lack the will to face the consequences of eliminating the personal laws of the major religions and it need to influence the people of justice and reform they want to bring to the society in order to grow better as a nation.
- Many peoples, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom. They fear that a common code will abandonment their traditions and enforce rules which will be mainly dictated and influenced by the majority religious communities.

- This will help to use the full potential in accordance to the needs of the youth and their impact towards nation-building. 55% of India's population is comprised of people below 25% years of age. Their social attitudes and aspirations are based on universal principles of humanity, equality, and modernity. In order to realize their full prospective for nation-building. Their approaches and aspirations should be respected⁵.

5.2 CONS

- India is a multi-cultural state and this it makes the mission of application of a common personal law very challenging as it would not cater to the demands of all the existing peoples. It is almost not feasible to come up with uniform rules for personal issues like marriage due to the cultural diversity⁶.
- Uniform Civil Code is considered by religious minorities as an encroachment on their privileges to religious freedom. They fear that their traditional religious practices will be substituted by the rules and orders of majority religious communities.
- The state should not obstruct in personal matters as the constitution provides for the right to freedom of religion of one's choice. Constitution promises minorities the right to follow their own religion and customs. Uniform Civil Code could be disrupting of that right.
- Uniform Civil Code would only discourage many from using the law altogether. This is exclusively true considering the fact that matters associated to marriage and divorce can be settled extra-judicially as well. Thus the commission recommended certain amendments in the personal laws interrelated to marriage and divorce⁷.

5. UNIFORM CIVIL CODE IMPLEMENTATION IN INDIA: PROS AND CONS

The UCC in India aims at substituting the personal laws based on the customs and scriptures of each religious community with a common code or law prevailing every citizen. The most significant aspect of the concept of Uniform Civil Code is that it has two characters; that there should be a uniform law for all people; and all people should be governed by one law with standardization within communities, especially between men and women.

5.1 PRONS

- A secular republic like India needs a mutual law for all citizens rather than discriminated rules based on religious practices. It will pave the way for national integration and secularism.
- Gender Parity - The rights of women are generally delimited under religious law, be it Hindu or Muslim. Triple talaq, priority given to men in terms of succession and inheritance are some examples. The most imperative advantage would be in the up-liftment in the status of women in society.
- Uphold rights - Many practices administered by religious tradition are contrary to the fundamental rights guaranteed in the Indian constitution. This will promote equality and justice because if there could be a uniform criminal act, then why not a common civil act, too.
- This will save the cumbersome legal stuffs governed by personal laws. As, in absence of common laws, judges construe various personal laws based on maintenance, inheritance, etc.
- Uniform Civil Code would make the dream of "One Nation, One Law" come true. India believes in one nation and hence no community shall claim distinct religious laws. In this way, it'll promote national integration.

6. CONCLUSION

Having a uniform civil code in a country is not just a difficulty of justice but it is also a matter of how a country accommodates the diverse population living within it. In India the freedom to follows your religion also exists just like any other rights such as right to equality and non-discrimination. India has taken a route to accommodate these diverse sections of people by permitting them practice their religious traditions by provisions of personal laws that on the other side results in inequality. Executing a uniform civil code may also risk in pushing people in conditions they may not want to live and this may cause a disturbance among the public. The people need to understand that the concept of laws and the concept of religion is different because the constitution of India allows the people to follow their religion that will also continue even after the implementation of uniform civil code as the uniform civil code is not going to take away anyone's rights to practice to profess anyone's religion and it is high time and people in India need to start observing law and religion as different concepts and having a uniform civil code will focus on equal authorization of people of all sections and henceforth it will be advantageous for the country and also will not violate the secular nature of the constitution and hence we can also say that the hypothesis taken is proved to be correct because

having a uniform civil code is the crucial requirement of the nation.

7. **CONFLICT OF INTEREST**
Conflict of interest declared none.

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