



Uniform civil code: A critical view from family law perspective in India

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Abstract

The history of India demonstrates the concept of 'unity in diversity', which is also reflected in the Constitution of India. The Constitution's fundamental framework of unity and integrity is designed to uphold and advance the personal laws of its residents, which pertain to marriage, divorce, inheritance, adoption, and maintenance. Furthermore, the Constitution of India advocates for the distinctiveness of its inhabitants rather than conformity, and emphasises a comprehensive comprehension of fundamental rights.

The problem at hand pertains to the need for the establishment of a single legislation in India, aimed at ensuring consistency, which would rule all individuals in the country, irrespective of their own laws. Furthermore, the notion of uniformity as unity jeopardises the distinctiveness of its inhabitants.

Is uniformity really necessary at this point, and what does the legislature mean when it talks about creating one law for all of India? Does judicial activism aim to promote uniformity or unity? The objective is to examine the significance of establishing a unified civil code as a single law and the coexistence of personal laws as a representation of diversity. Additionally, it strives to promote an understanding of social and legal issues as a necessity.

A critical analysis is conducted using legislation, bylaws, and ordinances as primary sources, and judgements as secondary ones. Additionally, it provides benefits to stakeholders such as scholars, litigants, and members of the public.

Keywords: Uniform code, personal law, unity and oneness

Introduction

The concept of 'unity in variety' is a distinct characteristic of India, intentionally reflected in the Constitution of India. India is renowned for its cohesive integration of diverse cultural, linguistic, and religious identities. India is characterised by its diverse population, yet it remains united as a single entity. The founders of the Constitution saw and valued this unity as a fundamental aspect of the country. The architects of the Constitution also strived for cohesion, rather than absolute sameness. They anticipated a nation with a strong sense of self-worth that would embrace and accommodate everyone as a unified whole without compromising individuality. The Constitution's fundamental framework is designed to uphold and advance the personal laws of its residents, encompassing matters like as marriage, divorce, inheritance, adoption, and maintenance, while emphasising unity and integrity. Furthermore, the Constitution of India advocates for the distinctiveness of its inhabitants rather than conformity, and emphasises a comprehensive comprehension of fundamental rights.

The issue lies in the fact that the desire for conformity and unity has given rise to discussions and arguments. The concept of uniformity, as many have contended, poses a threat to the individuality of its citizens. Therefore, there has been a strong need for the establishment of a single law for India, in the pursuit of uniformity that would rule all individuals in the country, irrespective of their own laws.

The primary objective of implementing the Uniform Civil Code is to safeguard women from the discriminatory aspects of family law that are founded on cultural and biblical traditions, commonly referred to as personal law in India. This is a proposition to create and enforce a set of rules that will govern all individuals in a fair and impartial manner,

irrespective of their religious beliefs, gender, cultural background, and customary practices.

Conversely, India is renowned for its diverse personal rules that are based on religious scriptures and apply to distinct populations. The proposition to enforce uniformity in family law poses a potential risk to personal law. Hence, the study seeks to meticulously examine the notion of uniformity and the necessity of a consistent civil code in India.

Uniform Civil Code

1. Meaning and Definition

The term "uniform" refers to something that remains consistent in all circumstances, maintaining the same form and method. It can also be interpreted as indicating the absence of differences. The Uniform Civil Code is a statute that is intended to rule citizens uniformly, regardless of religious or cultural variety, specifically in relation to family law in India.

The Uniform Civil Code refers to a collection of laws designed to provide a single rule that applies to all religious communities in India, governing their personal concerns like marriage, divorce, inheritance, adoption, and more. Although Article 44 of the Indian Constitution directs the State to strive for a Uniform Civil Code for all people across India, it does not provide a clear definition or framework for its implementation.

2. International Perspective

The concept of Common Civil Law, which ensures impartial and equitable dispensation of justice, is widely practiced in most countries, with only a few exceptions. It is suffice to mention a select few countries

Rome

The theory of civil law can be clearly attributed to the Romans. This idea was employed to develop a code specifically for the Roman People, which established the criteria for resolving legal matters. Jus Civile refers to a modern legal phrase that encompasses all the norms and principles of law derived from the laws and customs of Rome. On the one hand, there is jus gentium, which refers to laws drawn from the customs of all nations. On the other hand, there is jus natural, which pertains to the fundamental conceptions of good and wrong that are inherent in the human mind.

France

France's civil code is widely recognised as one of the most prominent and influential civil code in the world today. It invalidated both traditional legal practices and current legal regulations, and encompassed a wide range of personal legal matters. This code has achieved a harmonious equilibrium between privilege and equality, as well as between customs and legal obligations.

United States of America

The states, having the power to act as separate legal entities, follow their own civil laws that govern the people in the states.

Islamic Countries

The Islamic countries have a common law derived from religious teachings, practices, and traditions, which is interpreted by qualified jurists of the faith. It is based on traditional jurisprudence.

3. National Perspective

The issue of implementing a uniform civil code in India is currently a subject of continuing discussion and deliberation. The concept entails the establishment of a uniform legal framework that supersedes the existing personal laws throughout the nation. There are individuals who have a favourable anticipation that it is opportune to establish a unified legal system that rules the population in India, irrespective of their religious and scriptural affiliations, and treats them uniformly and comparably. However, there is ongoing opposition to the enforcement of a unified civil code aimed at governing family institutions based on their respective personal laws. In addition, there is a persistent concern that uniformity will eradicate the diversity, which is the intrinsic essence of the nation.

According to Article 44 of the Indian Constitution, the state is obligated to establish a consistent civil code for all citizens in India, as stated in the Directive Principles of State Policy. A number of Muslim men expressed their disagreement with this clause in the Constituent Assembly due to their concern that it may potentially nullify their personal law. This objection was based on the following reasons:

1. India had already achieved uniformity of law over a large area;
2. personal laws, despite their diversity, were not inherently sacred;
3. secular matters, like inheritance, covered by personal laws should be separated from religion; implementing a uniform law for everyone would enhance national unity; and

4. if people were against it, no legislature would easily amend any personal law in the future.

Furthermore, it is worth noting the discussion mentioned in Article 25, which ensures the freedom to hold and express personal beliefs, as well as the right to practise and promote one's religion. Nevertheless, one could contend that personal laws are applicable to non-religious activity and therefore fall under the jurisdiction of the government.

3.1 Uniform Civil Code in Goa

The Union Territory of Goa adheres to the Uniform Civil Code, which paved way to establish uniform rules across all states to harmonise personal laws pertaining to family matters. After gaining independence, the State of Goa decided to adopt the Portuguese Civil Code, which implemented a Uniform Civil Code that applied to all its residents. According to this code, a married couple has joint ownership of all assets possessed and obtained by each spouse. Muslim individuals who have officially documented their marriage in Goa are prohibited from engaging in polygamy.

Legislative on Uniform Civil Code

The pre and post- independent history reveals that the gender justice in family matters has been a subject of concern. It is evident that both Sharia law in Islam and Hindu law have contained provisions that were discriminatory towards women, limiting their rights and status. These provisions have particularly affected women's ability to inherit property, remarry, and seek divorce. The personal laws were initially formulated during the British colonial era in India, primarily targeting the Hindu and Muslim populace. The community leaders at that time encountered opposition and chose not to intervene further in this internal domestic realm.

Hindu Code

After the declaration of independence, the Hindu Code Bill was enacted to comprehensively codify and reform personal laws pertaining to different sects of religion in the country, including Buddhists, Hindus, Jains, and Sikhs. However, it did not apply to Christians, Jews, Muslims, and Parsis, as they were recognised as separate communities distinct from Hindus. The measure faced significant backlash from orthodox Hindus, primarily due to its clauses related to monogamy, divorce, elimination of coparcenaries, and inheritance rights for daughters.

Special Marriage Act

The Special Marriage Act of 1954 is a legal reform that allows any citizen, regardless of their faith, to enter into a civil marriage. This act enables Indians to have their marriage recognised beyond the jurisdiction of special religious personal laws. This law is applicable to all regions of India, with the exception of Jammu & Kashmir. The act closely resembled the Hindu Marriage Act of 1955, providing insight into the secularised family law in India. Thus, the Special Marriage Act offers substantial safeguards to religious minorities that are absent in their own religious Personal Laws, such as the Muslim Personal Law.

Impact of Shah Bano Case

The case became a prominent political and legal matter on a national scale, sparking a widespread and contentious debate. The order of the Supreme Court received support from liberal and progressive Indians. Although the government had a favourable stance on safeguarding the rights of Muslim women, it refrained from enacting any specific legislation due to the opposition over the protection of personal law. Following that, the Muslim Women's (Protection of Rights on Divorce) Act 1986 was enacted, rendering section 125 of the Criminal Procedure Code inapplicable to Muslim women. According to the Law Commission of India, the implementation of a Uniform Civil Code is now deemed unnecessary and not recommended.

Judiciary on Uniform Civil Code

In India, there is a strong appreciation for judicial activism when it comes to upholding and safeguarding human rights, as well as promoting equality that goes beyond socio-economic divisions. Furthermore, the judiciary has a strong commitment to safeguarding the rights and dignity of women, children, and old individuals within the family unit. In the Indian setting, the family exhibits socioreligious and cultural aspects that are governed by personal laws. The personal laws in India are primarily derived from the customs and religious doctrines of the family institution. These socio-religious personal laws govern the conduct and organisation of families in society. While unity in variety is widely acknowledged, we may sometimes encounter discriminating aspects. Consequently, the Indian judiciary has articulated significant perspectives on the necessity of implementing a Common Civil Code in relation to the family institution.

1. Maintenance

In the Shah Bano Case, the Supreme Court of India articulated its perspective on the necessity of implementing a common civil code as a means of safeguarding women inside the family. In 1985, Shah Bano approached the Supreme Court to request financial support under section 125 of the Code of Criminal Procedure. This was after her husband divorced her using the practice of triple talaq and refused to provide her with regular financial assistance, despite being married for 40 years. The Supreme Court ruled in favour of Shah Bano by using section 125 of the Indian Penal Code, which applies to all citizens regardless of their religious affiliation. The Chief Justice at the time, Y.V Chandrachud, noted that implementing a Common Civil Code would contribute to the promotion of national unity by eliminating conflicting allegiances to different legal systems. Consequently, the court instructed Parliament to establish a standardised civil code.

Conversely, the Rajiv Gandhi Government expressed dissatisfaction with the court's decision and, rather than endorsing it, passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to invalidate the Supreme Court ruling in the Shah Bano Case and uphold the authority of Muslim Personal Law in divorce cases. During this legislation, it was stated that a Muslim woman is entitled to support for just three months following a divorce, known as *iddat*, after which her maintenance responsibility is transferred to her relatives or the Wakf Board.

2. Dissolution of Marriage by Conversion

In the case of *Sarla Mudgal v. Union of India*, the Supreme Court has instructed the Government to examine Article 44 of the Constitution, which mandates the State to establish a uniform civil code. The Court deems this code essential for safeguarding the rights of the marginalised and fostering national unity and integrity. The Court issued a directive to the Union Government, specifically to the Secretary of the Ministry of Law and Justice, to submit an affidavit by August 1995. This document should outline the actions and endeavours undertaken by the Government to establish a unified civil code for all Indian citizens. The aforementioned directive was issued by the Court in a case where the issue at hand was whether a Hindu husband, who converted to Islam, may enter into a second marriage without dissolving his first marriage under Hindu law. The Court determined that the marriage in question would be deemed unlawful, and the husband might face legal action for the offence of bigamy as stipulated in Section 494 of the Indian Penal Code.

3. On Succession

In the case of *John Vallamattom v. Union of India*, a panel of three Supreme Court judges, including Chief Justice V.N. Khare, S.B. Sinha, and Dr. A.R. Lakshmanan, expressed their disappointment about the lack of implementation of a Common Civil Code. The petitioners in this case have contested the legality of Section 118 of the Indian Succession Act, arguing that it is discriminatory according to Article 14 and also violates Articles 25 and 26 of the Constitution. Section 118 of the Act limits the ability of a Christian to leave their property for religious or charitable purposes if they have a nephew, niece, or any other relative. The Act's definition did not encompass the testator's wife as a near relative, although an adopted son was considered a relative. In order for a Christian testator who has a nephew or niece to ensure the validity of a bequest for religious or charitable use, they must create and deposit their will at least 12 months prior to their death, within a maximum of 6 months. This restriction did not apply to an individual who had a spouse. The court ruled that Section 118 of the Succession Act is illegal as it violates Article 14 of the Constitution. The majority opined that Articles 25 and 26 are not applicable in this case, as the allocation of property for religious and charitable purposes is not considered an essential component of the Christian religion. Articles 25 and 26 specifically safeguard only those rituals and ceremonies that are an essential and inseparable component of a religion. The Chief Justice of India, considering the circumstances of the present case, strongly restated the opinion that the implementation of a Common Civil Code would effectively resolve such issues. He stated that Article 44 is founded on the principle that there is no inherent correlation between religion and personal law in a cultured society. Article 25 of the Constitution grants the freedom of belief and the unrestricted exercise, practice, and dissemination of religion. The aforementioned clauses, namely Articles 25 and 44, demonstrate that the former ensures religious freedom while the latter separates religion from social matters.

4. Registration of Marriage

In the case of *Seema v. Ashwani Kumar*, the Supreme Court took the initial action towards implementing the Uniform

Civil Code by ruling that all weddings, regardless of their religious affiliation, must be registered as a mandatory requirement. A two Judge Bench of the Supreme Court, consisting of Justices Arijit Pasayat and S.H. Kapadia, was moved by the difficult situation faced by women who are struggling for their rights in marriage, such as maintenance and custody of their children. As a result, the Bench directed the Centre and State Governments to make changes to the existing law or create new regulations, and to inform the public about these changes within a period of three months. The Court ordered the government to include provisions for the "ramifications of not registering marriages" in the regulations, which should be finalised after soliciting public feedback and taking it into account. The Court declared that the existing norms would remain in effect until the respective governments established appropriate legislation for the mandatory registration of marriages. Justice Pasayat emphasised the importance of not allowing any compromise or weakening of the intended goal to be accomplished by these legislations. He stated that any future laws created by governments must undergo examination by the Supreme Court. The Court deemed this order necessary due to the prevalence of deceitful husbands who abandon their marriages, placing their wife in a vulnerable position when it comes to seeking financial support, child custody, or inheritance rights. The Court's verdict will expedite the goal of implementing a uniform civil code, as many issues pertaining to it stem from the failure to register marriages.

The advantages of this verdict are as follows:

1. It will prohibit child marriage.
2. It will monitor and prevent bigamy and polygamy.
3. It will assist women in asserting their rights regarding marriage, maintenance, and custody of children.
4. It will empower widows to collect their inheritance.
5. It will discourage husbands from abandoning their wives.

Conclusion and Suggestions

There is a strong demand for the implementation of a Common Civil Code, which refers to a collection of regulations that would apply to all citizens regardless of their religious affiliation. Some argue that this progressive reform will effectively eliminate discriminatory practices against women from various religious origins, promoting togetherness. It is widely acknowledged that there is a necessity for social reform, particularly in addressing inequalities, discriminations, and promoting equality while protecting human dignity and rights. However, the question of whether the creation of a single code can truly unite citizens without eradicating individual identity and diverse cultural heritage in terms of faith and behaviour remains unanswered. It is important to recognise that the uniform civil code of India, which governs family rules, cannot be interpreted in the same way as the Criminal code, which applies to all individuals regardless of religion, ethnicity, caste, tribe, or residence.

Suggestions

- Article 25 of the Indian Constitution grants individuals the right to freedom of conscience and the freedom to practise and propagate their religion in accordance with their own desires and traditions. The coercive adoption of a Common Civil Code on diverse religious beliefs

would constitute a clear violation and infringement of basic rights.

- There is no text provided. Can it be disregarded? Undoubtedly, modern transition necessitates a significant amount of tolerance and acceptance. For example, to provide fair treatment for all individuals regardless of their religious affiliation, race, caste, and gender.
 - To advocate for gender equality.
 - Ensuring equitable treatment in the legal system, regardless of personal laws.
- However, it is crucial to comprehend and acknowledge that if personal laws, especially those pertaining to marriage, are made uniform in India, it will undermine the distinctiveness of diversity in the country. While it may seem convenient to impose such a law to govern and control all citizens, it would undoubtedly infringe upon their personal rights and breed intolerance among them.
- The essence of Indian society is characterised by unpredictability in terms of oneness and uniformity, particularly in relation to the various understandings and forms of marriage as a social institution. Religious freedom and respect shall be prioritised and carefully addressed.

Reference

1. MP Jain. Indian Constitutional Law. Haryana: Lexis Nexis, 2016.
2. Myneni. Constitutional Law. Hyderabad: Ancient Law House, 2019.
3. Pandey. Constitution of India. Allahabad: Central Law Agency, 2017.
4. Suklas. Constitution of India. Lucknow: EBC, 2015.
5. <https://www.legalserviceindia.com/>
6. Mohammad Ahmed Khan v. Shah Bano Begum, 1985.
7. Maharshi Avadhesh v. Union of India, 1994, SCC 713.
8. Sarala Mudgal v. Union of India, 1995, SCC 635.
9. Seema v. Ashwani Kumar, AIR 2006 SC 1158
10. Pannalal Bansilal Patil v. State of Andhra Pradesh, 1996, SC 1023.
11. John Vallamattom v. Union of India, AIR 2003, SC 2902.