

UCC AND GENDER JUSTICE: A BITTERSWEET HOPE**-Kriti Kabra¹**

ABSTARCT

The Uniform Civil Code or the UCC is mentioned in Article 44 and is often espoused as the saviour of women's rights and harbinger of gender justice within personal laws in India. By definition, it is a code that unites the various personal laws and make them uniformly applicable to all. It remains a hot topic for academicians and legal enthusiasts to study. Even politics is not spared from this celebrity debate, where it makes regular appearances - whether it may in the form of manifestos during election campaigns or as attacks from the opposition. And one of the main pushes for this proposal to become a reality is the hope to attain a greater level of gender justice than what we have today.

Personal laws are famously home to inequalities in their treatment of different genders. Irrespective of how these issues have evolved, problems persist and continue to harm the very people they govern. From marriage to adoption to succession and all areas in between, there exists an urgent need of the hour that needs to be addressed with concrete, realistic legislation and not a mere fantasy.

This article will deep-dive into what exactly the UCC is within the context of gender justice- its history, the current legal view that courts uphold along with the good and the bad. Whether the UCC will be able to do justice to this problem and remedy it or will fall short and remain a legend within India is what we shall see ahead.

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INTRODUCTION

Gender justice, though cemented in the constitution, unfortunately does not carry forward into reality. The Global Gender Gap Report 2021 placed India at 140 out of 156 countries. Even if the 2021 report was to be considered a special case due to the pandemic, looking back at the 2020 report (112th out of 153 countries) and the ones before that, they reveal better but still disappointing results. Though the scope of the report is limited to 4 criteria – economic participation, education, health and nutrition and political participation, they still indicate one key finding – that the state of gender equality in India is in dire need of help. The government launches various schemes that supposedly target these problems, but sadly they do not reach the grassroot levels, where the changes really matter. Even if they manage to do so, the results are not enough.

What complicates many schemes and laws that could be implemented to reform many areas like land inheritance, divorce, marriage, adoption etc is religion. Since many topics like these are governed by the personal laws specific to different religions, each topic needs specialised attention catered to the religion in order to bring about change. In order to combat this, the idea of a Uniform Civil Code was formulated.

WHAT IS THE UCC AND HOW CAN IT HELP IN GENDER EQUALITY?

The Uniform Civil Code (hereinafter “UCC”) is a code that has a uniform set of laws that are applicable to each individual, irrespective of religion or ethnic background. This concept was recognised by the Constituent Assembly. Debates reveal that there was no clear conclusion on how the UCC would pan out and was hence left to future generations to decide. Due to this confusion, it was placed within the Directive Principles of State Policy as Article 44 instead of Fundamental Rights, letting it be only a guiding principle at the time instead of being a legally enforceable right that the people have.

Women have traditionally been a disadvantaged group in society. Gender injustice has, and still is a major problem in our society. Centuries of patriarchy and colonialism has reduced the status of women to be less than that of men. In their eyes, women are similar to mere objects that can be controlled, who’s only identity is in relation to the men in their lives. They are passed around from one man to another – from the father to the husband to the son. This has

far-reaching consequences in economic, social, educational and political inequalities as well. Due to this, their rights go unenforced and sometimes even unrecognised. Women are entitled to the right to equality under Article 14 just like men are, yet their rights often go unutilised.

As per Article 25 of the Indian Constitution, every individual in India is free to profess, practice and propagate their religion. It is a celebrated provision that gives people a choice which is a fundamental principle of democracy. While diversity in society should be celebrated, it should not negatively affect disadvantaged groups in the process. Right to religious freedom is important, but it is also crucial to note that many 'social evils' such as dowry, child marriage, triple talaq, sati etc., are propagated in the name of religious customs and permeate society. Oftentimes they are merely a means to control and oppress women. Therefore, there needs to be a segregation between what is an essential practice to a particular religion and what is a mere custom that has nothing to do with religion in order to remove practices that harm people rather than help. The judiciary has been much more proactive in making this distinction in recent years, and as a result, giving birth to several landmark judgements in the process.

Gender justice is not limited to women. It also includes other non-binary genders such as transgenders and intersex people. These communities, frankly speaking, have minimal presence in the Indian Constitution. Their absence is quite noticeable, especially personal laws. The judiciary is taking steps to improve this. The Supreme Court paved the way to "third identity" or transgender recognition and upheld their fundamental rights as per Article 14 and 214. The Madras High Court declared that the term 'bride' as mentioned under Section 5 of the Hindu Marriage Act also included transwomen as well⁵. This was the first case in India that affirmed the inclusion of other gender identities who identify as women to become 'brides.' But as commendable as these developments are, judicial improvement does not substitute legislative disregard for this, and the legislature needs to step up their game in order to contribute.

General discussions around the UCC propose that these issues would be addressed. Apart from this, there are also other benefits that it could provide such as easier resolution of disputes, removal of religion specific laws, easier enforcement and overall convenience. It would be a boon for everyone. Rather than having to sift through various personal laws, the judiciary would only have to look at one set of laws irrespective of the parties involved, making the work of the judiciary much easier. The executive would have an easier time in enforcing the law and the people would be able to comprehend it much better. Also, several personal laws

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have contradicting laws. Having a single codified form would reduce this issue since clashes would be weeded out during the consolidating, drafting, and reviewing stage.

BITTER TRUTHS REGARDING THE UCC

Unfortunately, despite how the UCC seems to be an ideal solution to a number of problems regarding personal laws, it comes with its own hurdles that it will have to conquer before it will be able to make a meaningful impact on the gender inequality within society. These hurdles present issues that may act as deterrents in the UCC's creation and implementation.

No one knows what the UCC looks like. Article 44 states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." But this statement doesn't tell us anything. It is merely an idealistic project that knows what it has to do but without of clear path of how to get there. Even the constituent assembly wasn't aware of what this would entail. Some believed that it would run alongside personal laws and others thought that it would replace them entirely. In the end, it was left to the future generations to take up this ambitious project. UCC advocates argue that gender justice is a goal of the UCC. But where is this mentioned? The reality is that we don't know. We don't know to what extent women, non-binary genders and sexual minorities will be included and be given the rights they strive to attain in marriage, adoption, divorce, inheritance etc. Several questions remain unanswered.

Even if we were to put this idea into action, drafting and implementing the UCC is a herculean task. Especially in a country like India, which is so diverse in its culture and history, to the point that even each religion has different laws for different sets of people. A prime example of this is the 6th Schedule. It makes exceptions for people belonging to the states of Assam, Meghalaya, Tripura and Mizoram within the realm of family and personal laws. The law-making power for these subjects' rests with the regional and district council rather than the Parliament. Articles 371A and Article 371G expressly exclude Nagaland and Mizoram from the purview of Parliamentary law on customary practices, unless their legislatures approve of the same. On the topic of lack of uniformity within major religions in the country, a notable example is the Hindu Code. It was created with the intention of applying equally to all Hindus

but the intention was unable to stand the test of time.² Marriage is reliant on customs of that particular community,³ inheritance rights vary from region to region, who can be adopted is also dependent on customs and usage.⁴ It gives communities the freedom to conduct their ceremonies and carry on their cultural practices without trying to interfere and regulate every aspect. This has allowed communities to live in peace as their traditions are respected and they can continue to practice them as per their choice. Lawmakers face a difficult challenge in codifying such a law that would be able to accommodate this level of diversity in a manner that would be agreeable or acceptable to various communities.

Most of the lawmakers in the Parliament are men. Though it would be incorrect to say that men cannot make laws for women, but such laws do need female input from both Houses. Only 14% of the Lok Sabha consists of women⁵ and similar numbers are seen in the Rajya Sabha as well. Even though the number of women in the Parliament are at an all-time high and will continue to increase, it might not be fast enough. Another way to obtain this input could be through parliamentary committees. However, recent times have seen that parliamentary committees are sometimes not even formulated, preferring speed over efficiency. This breakdown of consultation channels leads to ineffective legislations⁶. There is also no guarantee that the committee for the UCC will even include women or other genders in adequate numbers or that the advice given by these committees will be taken into consideration during drafting. This shows dismal prospects for diversity in involvement from different genders in bill formulation. Gender equality is linked to literacy. India's rate of literacy is increasing but its effects will only be seen in a few decades, at the earliest. Without literacy, irrespective of what the law says, people will continue to follow their own beliefs and ideologies, no matter how regressive they are. Old practices will continue without regard for what is right or wrong. People turn to religion, though not inherently a bad thing, but when socially regressive practices are pedalled in the name of religion then UCC won't do much,

² *Ambedkar And The Uniform Civil Code*, OUTLOOK INDIA, (last visited Feb 25, 2022), <https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068>.

³ Hindu Marriage Act, 1955, Section 7, Acts of Parliament, 1955.

⁴ Hindu Succession Act, 1956, Section 17, Acts of Parliament, 1956.

⁵ Sruthi Radhakrishnan, *New Lok Sabha has highest number of women MPs*, THE HINDU (27th May, 2019), <https://www.thehindu.com/news/national/new-lok-sabha-has-highest-number-of-women-mps/article27260506.ece>.

⁶ Maansi Verma, *Why the growing lack of consultation in law-making is damaging democracy*, THE IE (10th June, 2021), <https://indianexpress.com/article/opinion/why-the-growing-lack-of-consultation-in-law-making-is-damaging-democracy-7352004/>.

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especially with lack of enforcement at the grassroot level. Education has to start from the ground up.

SO, WHAT'S NEXT?

The answer to this question has to be one that manages to maintain the delicate balance between right to religious freedom and right to equality. The best course of action would be to rectify the problems within the personal laws themselves without trying to create an entirely new legislation that would eclipse all these laws. This would consist of taking gradual steps to bringing equality within communities and genders of each religion, rather than trying to tackle the problem head on and address one gender versus the other as a whole. Maintaining a difference between religions is not inherently a bad thing. It indicates tolerance and preserves the diversity in the country's personal laws. It is not suggestive of discrimination, rather a robust democracy.

Over time, the UCC can be drafted by taking guidance from existing legislation. Society is generally a cumulative effect of the decades before that. It is heavily influenced by its thinking and mindset of their nearby ancestors and, as a result, is hesitant to change. Change is piecemeal. By slowly ridding the problems within the personal laws today and making efforts to improve the conditions of the disadvantaged groups, when the UCC is implemented, people will be more accommodating as compared to making a change cold turkey. Lawmakers will have to play the long game. The immediate effect may not be felt but over time it will prove to be beneficial to women as well as other genders. Gradual change will benefit the future generations.

At the end of the day, gender equality has to come from within society. The UCC can definitely make a difference but it merely the first step. Only when we start to see men, women and all other genders as equals, can we do something. Because no matter what the law says, societal and cultural views matter just as much and until they change, improvement will be a distant dream.

CONCLUSION

To quote the words of the court - *“It is a matter of regret that Article 44 has remained a dead letter... Common civil code will help the cause of national integration by removing desperate loyalties to laws, which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is for the State, which is charged with the duty of securing a uniform civil code and it has legislative competence to do so.”*

The UCC has been up in the air for far too long. It repeatedly comes up for discussion, but progress is slow. Baby steps are being taken through court judgements and new laws that grant women and other genders the rights they deserve such as triple talaq judgement, daughter's coparcener rights judgement or the transgender bill but the end goal seems far away. We must not lose hope and continue to work towards striving for equality in the community. Though changing personal laws and the UCC will not be able to cure all the problems, it will take care of a major chunk of the issues that torment our society and hence, the solution should not be delayed any longer.