

UNIFORM CIVIL CODE: - A SOCIO-LEGAL PRESPECTIVE

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ABSTRACT-

The Uniform Civil Code (UCC) aims to replace personal laws based on each major faith, community's scriptures and practices with a single body of rules that governs all citizens as it establishes a single law that applies to all faith communities in personal concerns such as marriage, divorce, inheritance, and adoption.²

Numerous problems are associated with UCC implementation which is societal and legal in nature as it goes contrary to Article 25 of the constitution which guarantees religious freedom to all people in India and safeguards the diversity of each faith's culture and rituals. Is UCC in Goa treat all religions equally? Are we becoming a more intolerant society to the other religious practices as recently seen in Hijab row? The main question is whether is UCC being blindly supported for justice for Muslim women or because other communities are being denied four marriages?

Ill-Informed discussions on UCC have created a huge confusion among the masses as there is a huge gap between the expectation and reality of implementing UCC which are- The fear of minority and tribal communities' ritual practices being overshadowed by the majority community practices are real. Uniform civil code is being blindly supported on the wrong prepositions that Muslim law is unfair to women which must be analyzed clearly. UCC is not a standardized code as seen in Goa where the Hindu men in Goa have the right to polygamy and the same practice is being used for propagating gender justice for Muslim women! The most neglected question is- Will the Majority community accept the sacrifice of its own religious practices (Hinduism being a diverse religion)?³

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² Faizan Mustafa, *Explained: Uniform Civil code — the debate, the status*, INDIAN EXPRESS, (September 18, 2019 11:24:50 am).

³ Albertina Almeida, *CJI Bobde Needs to Know That Goa Family Laws Are Not All Uniform or Equal*, THE WIRE, (April 5th ,2021).

The author's first part of the article deals with the impact on multiculturalist and non-multiculturalist societies by UCC. The second part of the article deals with the exploration of problems associated with the UCC and discusses the various realities associated with the implementation of UCC. The third part deals with the alternative solutions to UCC. The fourth part deals with a conclusion.

INTRODUCTION

Uniform Civil Code (UCC) object is to replace personal laws based on religious scriptures with a single body of rules that governs all citizens⁴. Personal laws through religious scriptures governs three subject areas – family law (marriage, divorce, custody, alimony and maintenance), property law (succession, inheritance and wills) and the law governing religious establishments (such as endowments and offices)⁵ but UCC aims to replace such governance through a singular law equally applicable on all citizens, neglecting their own unique religious and cultural practices. Due to which UCC is a threat to both religious and cultural practices, as religion and culture do not exist in isolation, but affect and influence each other. As various cultural practices become 'religionized' and various religious ideas become a part of the cultural practices.⁶

UCC is problematic on two fronts- Firstly, due to the codification of all personal laws and as a result the essence of the culture and identity of an individual is lost due to which the importance of culture in an individual's life is lost. As culture is the 'lens' through which an individual identifies itself and identify various experiences in the world through such lenses as described by Will Kymlicka⁷. This concept of culture is so sacrosanct that the constitution also identifies as evident from several articles mentioned in the constitution such as Article 25 (Freedom to practise, propagate religion), profess Article 26 (Freedom to manage own religious affairs).

⁴ Faizan Mustafa, *Explained: Uniform Civil code — the debate, the status*, INDIAN EXPRESS, September 18, 2019 11:24:50 am.

⁵ Jayanth K. Krishnan, *Legitimacy of Courts and the Dilemma of Their Proliferation: The Significance of Judicial Power in India*, in *Asian Courts in Context*, 290 (Cambridge University Press, 2015).

⁶ Mariam Rawan Abdulla (2018) Culture, Religion, and Freedom of Religion or Belief, *The Review of Faith & International Affairs*, 16:4, 102-115, DOI: 10.1080/15570274.2018.1535033.

⁷ WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS*, 83 (Oxford, Clarendon, 1995)

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Secondly, the idea of UCC is from the idea of⁸ nationalism which advocates for defined borders for a country populated by people of one race, one religion, one language which is also pointed by Rudolphs that the UCC is a direct attack on 'religious minority, personal laws and cultural identity' and, ultimately, a unified civil code is for the nationalists to remove cultural distinctions⁹. And such an idea is against the concept of pluralism and multiculturalist society which accommodates many communities which are different in terms of their ethnicity, religion, etc but yet protecting the individual member of the community instead of positing a binary opposition between national and community-based identities¹⁰. This multiculturalism becomes much more important for a country like India which has a huge diverse population with numerous Religions and Cultures. India should take into consideration of various personal laws associated with specific religion and must contemplate the true gap between the harsh realities and utopian expectations regarding the implementation of UCC, otherwise several social and legal problems can arise in the society, as discussed further in the essay.

The next part analyses and explores the various gaps between the realities and expectation regarding implementation of UCC.

1. One of the important arguments in favour of implementing UCC is that it is mentioned in Article 44 dealing with the Directive Principles of State Policy (DPSP). But in reality, the DPSP's are just the guiding light for the state to make laws and achieve the standard set by the constitution. Whereas, Article 25 guarantees Right to religious freedom (A Fundamental Right) which can't be overridden by a DPSP as held in the case of *Minerva mills vs Union of India*¹¹, so essentially the UCC has to effectively balance the DPSP (equality) and Fundamental right (religious freedom) as pointed out by Flavia Agnes¹², which is seemingly difficult when considering the debates around UCC in the present scenario.
2. As pointed out earlier that such ideas of uniformity are essentially brought on Nationalistic grounds but the main aim of including UCC in DPSP (Article 44) was for granting Equal status to women, which is evident from the constituent assembly

⁸ M.P. Singh, *Uniform Civil Code, Legal Pluralism and the Constitution of India* 5 JILS 7, 8.

⁹ RUDOLPH AND RUDOLPH, *LIVING WITH DIFFERENCE IN INDIA*, 55.

¹⁰ Rajiv Bhargava & Ashok Acharya, *POLITICAL THEORY AN INTRODUCTION*, 131 (Pearson 2008).

¹¹ *Minerva Mills v Union of India*, (1980) 3 SCC 625.

¹² Flavia Agnes, 'The Supreme Court, the Media, and the Uniform Civil Code Debate in India', in Anuradha Dingwaney Needham and Rajeshwari Sunder Rajan (eds), *The Crisis of Secularism in India* (Ranikhet: Permanent Black, 2007), p. 294.

debates¹³. But in reality, this original intent is absent when we are discussing UCC in today's time. The main question that we need to ask ourselves is that are we really securing UCC for justice for women or are we becoming so intolerant, as recently seen during the Hijab row and we want to shroud and invade other community's practices by the majority community practices, just because some community is being denied the rights which are available to a minority community. This gap increases due to the negligence of cultural diversity by the political community¹⁴ and inaction of politicians due to their vote-bank politics where either force them to act or omit certain duty in the name of vote-bank politics, so that their voter base is kept intact.

3. The most neglected question in the debate around UCC is that will Hindus really accept UCC? The answer in reality is very difficult to answer as Hinduism is a diverse religion. And if going by the constitution's definition of 'Hindus' then around 85% of the population falls into that domain and non- acceptance of UCC by such a large population is not healthy for a democracy like India. Example: - The Hindu Marriage Act of 1955 prohibits marriages between close relatives, yet it is considered auspicious in the south¹⁵. The concept of 'Goutra' in marriages is very popular in North India, but it is not a very essential practice of the Hindu culture in South.

This gap between the reality and expectation has led to the negligence of various social and legal problems associated with UCC.

SOCIAL PROBLEMS DUE TO UCC

1. Minorities in India oppose the idea of UCC as they fear that their cultures might be assimilated with the majority culture in the name of uniformity. This fear becomes evident when minorities are coerced to forge their individual religious or cultural identity and identify themselves as Indians¹⁶ or integrate into the Hindu mainstream.

¹³ M.P. Singh, *Uniform Civil Code, Legal Pluralism and the Constitution of India* 5 JILS 7, 8.

¹⁴ Ethnic Diversity and the Nation State Author(s): NIRAJA GOPAL JAYAL Source: Journal of Applied Philosophy, 1993, Vol. 10, No. 2 (1993), pp. 147-153 Published by: Wiley Stable URL: <https://www.jstor.org/stable/24354252>.

¹⁵ Faizan Mustafa, *Legal pluralism in personal law*, THE HINDU (OCTOBER 30, 2019), <https://www.thehindu.com/opinion/op-ed/legal-pluralism-in-personal-law/article29825335>

¹⁶ Neera Chandoke, *Rethinking Minority Rights*, Vol. 23, No. 1 (SPRING), pp. 123, 129 (1996).

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Example: - Basques in Spain, Quebecois in Canada, were all forced to shed their cultural identities and identify themselves as Spanish, Canadian.

2. Otherwise, these minorities will be coerced to prove their allegiance to the nation or they will be treated as a perpetual stranger in the society, which is harmful for the harmony of the society. The consequences can be learned from the Civil war which took place in Sri Lanka where one group (Sinhalas) wanted to suppress the other group's (Tamils) cultural and religious rights.
3. Members of minority groups are forced to give up their views due to the imposition of views of the majority community, which leads to a loss of self-esteem and isolation. This aggressiveness and isolation of a community does not contribute to the development of a healthy democratic polity¹⁷. Repercussions of cultural marginalisation are deadly as made aware by theorists like Frantz Fanon¹⁸. Example; - In Pakistan, Ahmadis are classified as a non-Muslim under Article 260 of the Pakistan Constitution and have been punished under the law for referring to themselves as Muslims or referring to their place of worship as a mosque.
4. Tribes and UCC- Tribes are being significantly exploited as their natural resources are being exploited for gaining profits in this capitalist society which has subjugated them to bonded labour¹⁹. The tribals are being drawn into the mainstream of national life — economic, political, and cultural — not only to be pushed to the bottom of the social/class structure, but also to be governed by laws that ignores their own personal laws. Example: - Polygamy is practised by the Naga tribes, the Gonds, the Baiga, and the Lushai and various other tribes, which has been barred by the Hindu Marriage act, 1955.
5. This problem was highlighted by a Tribal group²⁰ when it went to Supreme court against the implementation of UCC. They claimed that – “the Adivasis (tribals) had their own personal laws and do not come in the category of Hindus as they worshiped nature instead of idols and performed burial of the dead. The marriage ceremonies of tribals are also different from the Hindu rituals”.

¹⁸ Neera Chandoke, *Rethinking Minority Rights*, Vol. 23, No. 1 (SPRING), pp. 123, 133 (1996).

¹⁹ NIRAJA GOPAL JAYAL, Ethnic Diversity and the Nation State, Vol. 10, No. 2, *Journal of Applied Philosophy*, pp. 147-153, 151, (1993).

²⁰ Utkarsh Anand, *Tribal Rights Group Moves SC Against Uniform Civil Code*, INDIAN EXPRESS (Oct. 24, 2016, 5:47 pm), <https://indianexpress.com/article/india/india-news-india/supreme-court-tribal-rights-protection-customs-uniform-civil-code-3094151/>

LEGAL PROBLEMS DUE TO UCC

Several Legal problems are associated with implementing UCC, which are being neglected in the debates centred around UCC. Various Articles in constitution appear to be in contradiction UCC.

1. Article 29 (1) of the fundamental rights states that- *“Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”*. This article acknowledges that different groups have different cultures and these different linguistic and religious practices are important to their individuals. Further, this article cannot be restricted on any grounds by the state as it acknowledges that members of minority cultures may face disadvantages in a majoritarian society; and that, as a result, these members have special rights to their own culture. And suppression of such practices or cultures goes against the Fundamental Right, which happens when we promote the idea of UCC.
2. The Importance of special rights to minorities is also important as it was also recognised by the constituent assembly. The constituent assembly viewed this special right of minority to their culture as sacrosanct and as an unqualified right. As Dr. Ambedkar said when the Interim Report on Fundamental Rights was being debated in the Constituent Assembly - *“(r)ights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction... I think that the rights which are indicated in clause 18 are rights which every minority irrespective of any other consideration is entitled to claim²¹”*.
3. India’s responsibility towards protecting and promoting different cultures becomes more important as it is a secular state. The Indian concept of secularism (state treating all religions equally) is divided into three components- religious freedom, neutrality and reformatory justice as defined by Rajeev Dhavan²². A secular state like India cannot promote religious freedom by implementing UCC as it homogenises different cultures, rituals, practices and moreover, India should not abolish the personal laws of a religion or religions due to a single regressive practise. Religious freedom here is not just religious beliefs but also includes rituals and practices. Protecting such religious

²¹ Constituent Assembly Debates, Official Report, vol 3, Lok Sabha Secretariat, Delhi 1989, pp. 507- 508.

²² RAJEEV DHAVAN, THE ROAD TO XANADU: INDIA’S QUEST FOR SECULARISM, (Bloomington: Indiana University Press, 2001).

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freedom becomes much more important as other freedom related to speech and expression²³, etc essentially derives when such religious freedom is available to the community and individual. Moreover, the concept of secularism can't be forsaken for implementing UCC as secularism is considered to be a part of the basic structure doctrine as held in the case of ²⁴*Kesavanand Bharati vs State of Kerala*.

4. One more utopian expectation is that Goa is cited as a shining example of UCC, but the reality could not be farther from the truth, as there are various discriminatory provisions in the code, which favours Christians or Hindus and further there is no uniform applicability of personal laws in the code. Example: - The Code allows Hindus²⁵ to practise limited polygamy under specific conditions, but prohibits polygamy in Muslims. Catholics are also granted several privileges under the Code and are not required to register their weddings and signatures of church is adequate for civil registration. Many women are unaware that the UCC demands a second confirmation through signatures, and as a result, their marriages are declared null and void when a disagreement occurs. Many incidences of fraud have been documented as a result of such deceptions²⁶.

Pluralism in Indian society is a major reason why UCC appears to be a faraway dream. We must consider each minority's particular judgments and laws equally in order to protect the nation's diversity and to avoid such problems we must consider Special marriage act and concept of Legal Pluralism as an alternative to UCC.

ALTERNATIVE TO UCC

Special Marriage Act is a civil alternative to personal laws that can be chosen freely by a person. In contrast to personal laws, the Act provides a common or uniform marriage for all Indian people, regardless of religion or caste.²⁷ In the case of marriage and related concerns,

²³ RAJEEV DHAVAN, *THE ROAD TO XANADU: INDIA'S QUEST FOR SECULARISM*, (Bloomington: Indiana University Press, 2001) Page 279.

²⁴ *Kesavanand Bharati vs State of Kerala*, (1973) 4 SCC 225.

²⁵ Alberta Almeida, *CJI Bobde Needs to Know That Goa Family Laws Are Not All Uniform or Equal*, THE WIRE (Apr. 5, 2021), <https://thewire.in/law/cji-bobde-needs-to-know-that-go-family-laws-are-not-at-all-uniform-or-equal>

²⁶ Faizan Mustafa, *EXPLAINED: WHY GOA'S CIVIL CODE IS NOT AS UNIFORM AS IT IS MADE OUT TO BE*, INDIAN EXPRESS (Apr. 20, 2021), <https://indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/>

²⁷ Krishna Kumari, Areti, *In the Absence of a Uniform Civil Code, is the Special Marriage Act the Best Alternative for Women?* (January 10, 2007). Available at SSRN: <https://ssrn.com/abstract=956233>

this Act takes a different approach, as it extends to specific persons regardless of their religious affiliation. The Act establishes a common or uniform marriage for all Indian citizens, regardless of religion or caste. The Special Marriage Act of 1954 is regarded as a watershed moment in India's secularisation of personal laws.²⁸

Country like India with enormous diversity and social heterogeneity must continue practising Legal pluralism²⁹ as it promotes heterogeneity, which perfectly fits with the socio-economic conditions prevalent in India, which is also endorsed by Rudolphs, when he says that the “Proponents of legal uniformity support a uniform civil code, and proponents of legal pluralism argue for minority rights in the form of diverse personal laws³⁰”. Example: - Tribal Laws in coexistence with IPC³¹ is a shining example of Legal pluralism where both the systems work harmoniously, and minorities are given their constitutional right to practise their rituals and cultures.

CONCLUSION

Article 51A of the constitution imposes a duty on every citizen- "To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic, regional or sectional diversities,". This duty is on citizens, which also includes our Elected Representatives as they are also the citizens of the country. Their duty is much more when compared with that of normal citizen as they are the elected by the people for establishing a welfare state which promotes harmony between different communities and not divide them in the name of religion. To improve the Special Marriage Act and Legal Pluralism, the state must create an atmosphere conducive to discourse among many communities, avoiding the necessity to implement UCC.

The repercussions of implementing UCC are many as described earlier but still if the ‘State’ wants to implement UCC then the Piecemeal improvements would be a preferable

²⁸ Shambhavi Singh, *Special Marriage Act in Absence of Uniform Civil Code*, 4 (3) IJLMH, 295 - 301 (2021), <https://doi.org/10.10000/IJLMH.11451>

²⁹ M.P. Singh, *Uniform Civil Code, Legal Pluralism and the Constitution of India* 5 JILS 7,10.

³⁰ Rudolph and Rudolph, ‘Living with Difference in India’, p. 36.

³¹ M.P. Singh, *Uniform Civil Code, Legal Pluralism and the Constitution of India* 5 JILS 7, 9.

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course of action³², which was also the idea discussed in the constituent assembly. ³³Hussain Imam in the constituent assembly said that- “I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant day. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles³⁴.”

The adoption of UCC may jeopardise harmony in the society. While implementing the UCC across the country, we should keep in mind the concerns of minority and tribal groups and the possible loss of their culture and identity within the Indian culture.

³²Faizan Mustafa, *The importance of piecemeal reforms*, THE HINDU (May 28, 2016, 05:54), <https://www.thehindu.com/opinion/op-ed/the-importance-of-piecemeal-reforms/article6167344.ece>

³⁴ Constituent Assembly Debates, Vol. VII, p. 546.