

Uniform Civil Code in India: Gaps and Implementation

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Abstract

The need for the Uniform Civil Code (UCC) arises from the need to have a uniform set of rules dealing with matters of marriage, divorce, inheritance and adoption by all Indians without taking into account their religions as is reflected by the incorporation of UCC in Article 44 of the Indian Constitution. Despite the constitutional provisions, the applicability of the UCC is still contentious in legal, political and socio-cultural domains. The gap between what is intended by the constitution and what is happening in practice remains the main theme of this critical review of literature on the UCC. This study uses feminist jurisprudence, political sociology and constitutional theory to examine the diversity in Indian law that has resulted in the personal laws that often negate the spirit of gender justice and equality. The issue of human rights and feminist perspective holds that personal law systems continue to perpetuate discrimination against women, thereby infringing on equality and dignity promised in the constitution. Nevertheless, there are problems related to minority rights and cultural autonomy that have rendered the process of reform complicated. Furthermore, the paper highlights that the chasm between the purpose and the practice of the constitution has widened due to legislative inertia and sporadic judicial intervention. In this regard, this paper argues that a holistic approach that ensures the balance between constitutional morality and the complex social fabric of India is required for the effective implementation of the UCC through various theoretical perspectives. The conclusions drawn by highlighting gaps in contemporary research contribute to the ongoing debate.

Keywords: Uniform Civil Code, Personal Laws, Constitutional Morality, Gender Justice, Minority Rights, Equality before Law.

Introduction

Among the several socio-legal reforms in India since the time of the drafting of the Constitution, one of the most controversial ones has been that of the Uniform Civil Code (UCC). This concept has been provided under Article 44 of the Constitution of India where it is mentioned that there is the need to bring about harmony in the personal laws of marriage, divorce, succession, adoption, and maintenance irrespective of the religion followed by the individual (The Constitution of India, 1950). This UCC was supposed to act as a mechanism for achieving equality, gender justice, and national integration as per the intentions of the Constitution's framers (Austin, 1999). But its enactment remains difficult due to various reasons despite being a constitutional obligation (Mahajan, 2017).

India has always maintained a pluralistic system regarding its personal laws where several religious communities—Muslims, Christians, Parsi, and Hindus—are subjected to specific laws that are

dependent on their religions (Casanova, 2014). While the pluralistic system can be defended as a means to preserve cultural autonomy and religious freedom, the pluralism in the country has also caused discrimination in the form of rights discrepancies between different groups such as women and the disadvantaged populations (Narayan, 2016). Personal laws in some of the religious sects have been claimed as promoters of gender discrimination in cases like divorce and property inheritance (Agnes, 2002). Due to this, constitutional jurists and women's rights groups have been very firm in their stance for a UCC to ensure equal rights for all the citizens irrespective of their religious identity (Banerjee, 2020).

A number of interpretations can be offered in regard to the gap between the promise made by the constitution and the practice of UCC. Firstly, the process of policy-making has been constrained by the absence of consensus among the political parties and civil society concerning the criteria of an equitable and legitimate standard code (Jaffrelot & Tillin, 2016). It is still unclear whether "uniformity" refers to a set of principles of equal rights that would give way to a diversity of practices or implies the total uniformity of personal laws (Kaur, 2018). Secondly, minority groups, in particular Muslims, have rejected the UCC as being a threat to their autonomous legal identity and have done so out of fear of the domination of majority culture (Engineer, 2019). Issues of citizenship, cultural rights, and secularism in a multicultural society are revealed in the political dynamics of personal law issues (Bhargava, 2008).

Empirical evidence suggests that the Indian state has achieved limited success in reform and codification efforts. The potential for legislative intervention in personal laws is demonstrated by significant changes such as the Hindu Code Bills in the 1950s and 1960s (Derrett, 1977). Nevertheless, similar legislation is yet to be introduced for other communities, highlighting the absence of correlation between the legislative process and the constitutionally set objectives (Reddy, 2021). Legal interventions in terms of court judgments have been part of the debate as well; the Supreme Court of India has proposed reforms while preserving the constitutional rights of religious freedom (Supreme Court of India, 2019). Considering the institutional obstacles to the implementation of a Uniform Civil Code in India, gender and equality concerns, political conflicts, and the constitution must be analyzed in order to examine whether the UCC can foster harmony and justice or threaten the principles of plurality.

Literature Review

In India, the issue of Uniform Civil Code (UCC) has long been a contentious one, relating to legal change, politics, gender justice, religion, and constitutional theory. The present study outlines the important issues, theories, and empirical gaps identified in the previous research by bringing together literature from different fields.

- **Directive Principles and the Constitutional Background**

Article 44 of the Constitution of India, which directs the state to implement a uniform civil code for all the citizens, forms the basis of the UCC (The Constitution of India, 1950). Scholars such as Austin (1999) have noted that the commitment of the drafters to national unity, logic, and constitutional morality is evident from Article 44. Austin claims that despite its non-justifiability, Article 44 represents the constitutional ideal of equality of citizenship.

As Bhargava (2008) does through the context of India's overall constitutionalism, the discussion of UCC in terms of the tension between individual and collective rights can be extended. Bhargava argues that while the directive principles may be understood as normative imperatives of legislative and judicial action, they do not constitute legally enforceable obligations. Similarly, Mahajan (2017) argues that the whole reason why UCC is needed is due to constitutional morality, arguing that UCC is required to achieve substantive equality.

Nevertheless, the constitutional discourse is also challenged by scholars. As Jaffrelot and Tillin (2016) argue, the inclusion of UCC in the Directive Principles is an indication of a compromise, which is a balance between socio-religious pluralism and modernity. The practical significance of such ambivalence is that political elites have the means of evading substantive reforms under the guise of respecting religious autonomy.

- **Pluralism and Personal Laws**

The system of personal laws in India is pluralistic by its very nature, wherein the religion-based laws apply to Hindu, Muslim, Christian, Parsi, and other communities, concerning marriage, divorce, inheritance, and adoption issues (Casanova, 2014). The pluralistic nature of Indian personal laws is a

cause for extensive anthropological and legal study. The interaction of the universal legal norms and the religious legal systems is problematic for the modern states, as illustrated by the cross-cultural study of public religions by Casanova (2014).

Especially, Narayan (2016) sheds light on how gender equality is influenced by the plurality of personal laws. She shows how the right to property and divorce has been discriminatory against women in various personal laws, especially in Muslim personal law. The normative difference between the reality of the women living under personal laws and the constitutional duty towards gender equality (Articles 14–15) becomes clear through Narayan's arguments. In this context, Agnes (2002) provides a feminist critique of personal laws. According to Agnes, personal laws are patriarchal practices that oppose the feminist notions of equality and freedom. Agnes argues that the change is a political struggle of gendered nature instead of a mere legal issue. Banerjee (2020) agrees with Agnes and proves that women's rights organizations have persistently advocated for the implementation of a UCC as an indispensable tool to end gender discrimination systemically.

- **Human Rights and Feminist Perspectives**

The discussion of personal laws has been deeply influenced by feminist scholarship. One of the first scholars to assert that the system of personal laws institutionalizes gender inequality is Agnes (2002). According to her, the introduction of UCC is a move to ensure substantive equality, an idea substantiated by the empirical evidence provided by Banerjee (2020). Similarly, Kaur (2018) introduces a paradigm of critical secularism and argues that UCC should be focused on maintaining equality of rights, not eliminating religious identity. The author believes that UCC can allow for reasonable pluralism while ensuring gender justice, avoiding a dichotomy of secularism vs. religious identity.

Reddy (2021) takes an approach based on rights and introduces UCC in the framework of human rights standards. Scholars in the field of human rights, who claim that exceptions from personal law contradict the requirements of international legal standards, provide further proof to the thesis introduced by Reddy, according to which the Indian obligations according to CEDAW require changes in the discriminatory personal laws.

- **Social Resistance and Political Mobilization**

There are studies analyzing the political context of the UCC debate aside from normative and legal criticisms. In the study of Jaffrelot and Tillin (2016), political parties often use UCC as a political instrument for increasing polarization within communities or showcasing their modernist credentials. Their study reveals how UCC debates may be embedded in identity politics, especially during election periods.

As part of the sociological study of the issue, Engineer (2019) emphasizes the resistance of minority groups, especially the Muslims, who consider the UCC as threatening their religious freedom. In Engineer's study, resistance comes from long-held apprehension of majoritarian dominance rather than merely conservative backlash. Scholars that argue for the same position that minority opposition is rooted in fears of citizenship, secularism, and autonomy are Bhargava (2008) and Jaffrelot and Tillin (2016). On the other hand, Kaur (2018) notes another paradoxical situation where one group believes that the difference in personal laws undermines individual freedom while others feel that the UCC hampers diversity.

- **Implementation and Reforms of the Law the Gap**

While there is theoretical consensus on the need for reforms, implementation has not been done much thus far. The historical study conducted by Derrett (1977) on the Hindu Code Bills shows the power of legislation to facilitate revolutionary reform in the field of Hindu personal laws. However, why have reforms not been done for other communities? A study of the institutional constraints on the implementation of UCC through judicial and legislative efforts can be seen in Reddy (2021), who explains that while the courts have been advocating reform in the field of civil code through their rulings, the Indian legislature has been reluctant to implement these reforms due to political sensitivity.

Furthermore, Narayan (2016) states that the lack of bottom-up efforts for the reform of civil code is what leads to the problem of political will. There is no movement advocating for the UCC in its entirety, unlike the women's rights movements, which have succeeded in demanding certain legislative reforms (like anti-dowry laws). This reflects both the complexity of the problem as well as the tactical differences among the reformists. The judiciary has tried to bridge this gap. The Supreme Court verdicts have asked

the government to consider UCC based on the principle of equality as per the constitution (Supreme Court of India, 2019). Nevertheless, scholars like Mahajan (2017) emphasize that judicial advice is not a substitute for legislation.

- **Deficiencies in Methodology and Theory**

While a number of perspectives are considered in the literature, there are still some weaknesses. First, empirical evidence regarding people's views about UCC in various groups is limited. The lack of research on the popular view of the balance between freedom of religion and equality is apparent and most of the literature is normative and theoretical in nature. Second, there is no mention of what materials should be included in UCC while the term "UCC" is taken for granted by the literature. Blueprints of policy and comparative frameworks of other multiple societies are hardly analyzed.

Third, while the gender analysis may be right, the same is not equally true of other communities since it focuses mostly on the personal laws of the Muslims and Hindus. There is still space to study intersectional dynamics, that is, the interplay of caste, class, gender, and religion in individual legal experiences. Legal harmonization efforts at the state level are yet to be fully explored. Progressive laws on marriage and inheritance have been introduced in some Indian states; these could prove helpful in understanding how UCC can be implemented.

Conclusion

The Indian literature related to UCC represents a multifaceted and contested intellectual space. Directive principles versus rights, as well as Article 44, receive special attention in fundamental constitutional analysis. Legal pluralism studies stress the diversity of personal laws and problems of balancing them and equality norms. UCC is discussed as a means of justice in feminist studies, which stress the gender discrimination inherent to personal laws systems. Mobilization of UCC in identity politics is revealed through political analysis. Finally, implementation-oriented research reveals the gap between legislation and constitutional promises. There are numerous important lacunae in the existing body of literature despite its abundant nature, especially concerning comparative analysis, policy design, and public opinion research. It is crucial to fill them in order to change the focus from theoretical principles to reform solutions. Only in such a case can India's pluralist and democratic society fulfill the promise of UCC as envisaged in the Constitution.

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