

Need and Importance of Implementation of UCC in India

Dr. Bhagyashree A. Deshpande

Professor [B.E. LL.M. Ph.D. (Law)], Dr. Panjabrao Deshmukh College of Law,
Amravati

bhagyashri.deshpande72@gmail.com

Abstract

In the countries of the world, specifically in UK and USA; there is one law for governing the rights of the people in all matters including family matters. There is no provision of personal laws. This is possible where one or two religions prevail. In India, there is the diversification of the laws and rules. On this backdrop, as an author I want to throw a light on the need and importance of implementation of UCC by considering the issues and challenges in implementing it. The concept of Uniform Civil Code (UCC) is incorporated under Article 44 of the Constitution of India. Article 44 is one of the Directive Principles of State Policy incorporated under Part IV of the Indian Constitution.

In India, majority population is of Hindus, considerable population is of Muslims and Christians and Parasis are minorities. The customary norms / tenets prevailing amongst Hindus, Muslims, Christians and Parasis are distinct and distinguished; specifically in the areas of marriage, divorce, maintenance, succession / inheritance, adoption, guardianship etc. The persons following their respective religions are in favour to keep their personal laws unchanged as they think that customs / tenets prevailing in my community and religion are superior and supreme. This is one of the major issues and challenges in the implementation of UCC in India. Our Constitutional framers have included a concept of UCC under Article 44 of the Constitution of India by propounding uniform laws to all Indian citizens in the areas of family matters irrespective of their respective religions. However, due to pressure of common spirit of the community which is referred as 'volkgeist' by the eminent jurist Savigny; no political party could dare to touch or change personal laws yet which are based on respective religions.

Because there is an apprehension in their minds that implementation of UCC would adversely affect on their vote bank. Politicians do not dare to hurt the feelings of the people in their personal matters. With the result, UCC couldn't get implemented yet. This is another prominent issues / challenges to UCC.

In Shayara Bano judgment¹, Indian Supreme Court referred a need of UCC in India. However, while delivering judgment, it has kept original Quran untouched and gave a judgment in favour of abolition of Triple Talaq i.e. Talaq-e-Biddat by keeping Talaq-e-Sunnat as it is. Implementation of UCC is a need of an hour as it is important to fulfill the concepts / tenets of unity in diversity, secularism and equality which are embodied in our Constitution. Supreme Court of India has ratified the concept of equality through an implementation of UCC in the first case i.e. Sarala Mudgal's Case.² Implementation of UCC is crucial / important for abolition of polygamy and unilateral divorce. It is important for the removal of diversification of laws and rules prevailing amongst various religious. Uniformity in the laws which govern the people is the need of the time. UCC will serve a purpose of maintenance of true equality in the country.

Keywords

Uniform, Civil Code (UCC), Directive Principles, Implementation of UCC, Equality, Secularism.

Introduction

In the countries of the world, specifically in UK and USA; there is one law for governing the rights of the people in all matters including family matters. There is no provision of personal laws. This is possible where one or two religions prevail. In India, there is the diversification of the laws and rules. On this backdrop, as an author I want to throw a light on the need and importance of implementation of UCC by considering the issues and challenges in implementing it. The concept of Uniform Civil Code (UCC) is incorporated under Article 44 of the Constitution of India. Article 44 is one of the Directive Principles of State Policy incorporated under Part IV of the Indian Constitution.

Objectives

- To consider the meaning of UCC.
- To discuss issues and challenges in the implementation of UCC.
- To study and analyze the need and importance of UCC.

¹ Shayara Bano v. Union of India (2017) 9 SCC 1.

² Sarala Mudgal v. Union of India AIR 1995 SC 1531.

- To discuss on “Implementation of Uniform Civil Code and Gender Justice.”
- To analyze Shah Bano Case and Shayara Bano case and other case laws.
- To highlight the need and importance of implementation of UCC.
- To draw conclusion.

Hypothesis

Implementation of UCC is urgently needed as it is essential and significant for the removal of religious inequality amongst various religions, to achieve a spirit of national integration, gender justice and the concept of secularism in true sense in the fields of marriage, divorce, maintenance and succession etc.

Research Methodology

Research Methodology adopted for the writing this research paper is Doctrinal Research Method (Methodology).

Meaning of UCC

The UCC means and includes an applicability of all the laws to all the persons/ Indian Citizens irrespective of caste, creed, religion, sex, colour etc. on the basis of uniformity. UCC includes a replacement of personal laws with a common set of rules governing every citizen.

Issues and Challenges in the Implementation of UCC

In India, majority population is of Hindus, considerable population is of Muslims and Christians and Parsis are minorities. The customary norms / tenets prevailing amongst Hindus, Muslims, Christians and Parsis are distinct and distinguished; specifically in the areas of marriage, divorce, maintenance, succession / inheritance, adoption, guardianship etc. The persons following their respective religions are in favour to keep their personal laws unchanged as they think that customs / tenets prevailing in my community and religion are superior and supreme. This is one of the major issues and challenges in the implementation of UCC in India.

Our Constitutional framers have included a concept of UCC under Article 44 of the Constitution of India by propounding uniform laws to all Indian citizens in the areas of family matters irrespective of their respective religions. However, due to pressure of common spirit of the community which is referred as ‘volkgeist’ by the

eminent jurist Savigny; no political party could dare to touch or change personal laws yet which are based on respective religions. Because there is an apprehension in their minds that implementation of UCC would adversely affect on their vote bank. Politicians do not dare to hurt the feelings of the people in their personal matters. With the result, UCC couldn't get implemented yet. This is another prominent issues / challenges to UCC.

Need and Importance of UCC

In India, there is a diversification / differences in the matters of marriage, adoption, maintenance, guardianship and inheritance/ succession on the basis of religion as per the customs of each religious community. These diversification / inequalities are incorporated under the provisions of various personal laws such as –

Laws Relating To Marriage Of Women

- The Hindu Marriage Act, 1955,
- The Indian Christian Marriage Act, 1872
- The Parsi Marriage And Divorce Act, 1936
- The Special Marriage Act, 1954
- The Muslim Women (Protection of Rights on Marriage) Act, 2019.

Laws Relating To Divorce Of Women

- The Hindu Marriage Act, 1955
- Divorce Of Women Under Muslim Law
 - Judicial Divorce Of Muslim Women Through The Dissolution Of Muslim Marriage Act, 1939
 - Muslim Women Under The Muslim Personal Law (Shariat) Application Act, 1937
- The Divorce Act, 1869
- The Parsi Marriage And Divorce Act, 1936
- The Special Marriage Act, 1954
- The Indian Divorce (Amendment) Act, 2001

Laws Relating To Succession

- The Hindu Succession Act, 1956
- The Hindu Succession (Maharashtra Amendment) Act, 1994

- The Hindu Succession Amendment Act, 2005
- Law Relating To Muslim Women's Right To Succession
- The Indian Succession Act, 1925 (Law Relating To Christian Women's Right To Succession)
- The Indian Succession Act, 1925 (Law Relating To Parsi Women's Right To Succession)

Law Relating To Maintenance Of Women

- Hindu Marriage Act, 1955
- The Hindu Adaptations And Maintenance Act, 1956
- The Muslim Women (Protection Of Rights On Divorce) Act, 1986
- Muslim Women (Protection On Rights On Divorce) Rules, 1986
- The Christian Divorce Act, 1869
- The Parsi Marriage And Divorce Act, 1936
- The Special Marriage Act, 1954
- Maintenance Under The Code Of Criminal Procedure

In order to remove these inequalities, to develop a spirit of national integration and to achieve a true concept of secular, implementation of UCC is urgently needed as an achievement of equality is with crucial importance. Hence implementation of UCC is important as well.

- There are various examples of diversifications on the basis of religion. Some of these diversifications can be summarized as -

There are some instances of difference of religion and faith which makes it difficult to implement uniform civil code.

- According to Hindu Marriage Act, 1955, a Hindu can marry only one wife but a Muslim can validly marry four wives at a same time. If a Hindu person makes second marriage he will be liable for a punishment u/s 494 and 495 of IPC and second marriage will be treated as void.
- If a Hindu person wants to divorce his wife then it can be done only after fulfilling the conditions of divorce given in Hindu Marriages Act, and after obtaining a decree from the court. But a Muslim person can divorce his wife at any time without assigning any reason and without recourse to the court.

- If a Hindu person divorces his wife then he is required to provide maintenance to his wife during her life time or until she contacts another marriage, but a Muslim person has to provide maintenance to his wife during the period of iddat only. It means the liability to pay maintenance is over after a very limited period i.e. iddat in case of a Muslim person.
- In case of Shah Bano, the lower court had given decision that the provisions of CRPC (Sec. 125) with respect to maintenance is applicable to Muslim as well. The supreme court of India also confirmed the decision of lower court i.e. the Muslims should also provide the maintenance till her life or until she remarries. But after this decision a great controversy arose among Muslims and in response to controversy the government enacted a law namely Muslim Women (Protection of Rights on Divorce) Act, 1986. In this Act it is provided that wife can take shelter of section 125 of CRPC for seeking maintenance but for that her husband's consent is necessary. So, even after enactment of said Act, the position remain same i.e. she will get maintenance till iddat only.
- If a Hindu person wants to transfer his immovable property exceeding Rs. 100 then registration is necessary but no such registration is necessary if property is transferred by Muslim person. Similarly, for the purpose of making a will (Wasiyat) no writing and registration is required in case of Muslim but if a Hindu person wants to make a valid will then registration is necessary.
- Under the provisions of Hindu Law, Adoption of Child is permissible. But adoption is not permissible for a Muslim person.
- Gift of immovable property can be executed even though it is by oral communication in a case of Muslim while registration is mandatory for an execution of a gift of immovable property by a Hindu.
- There is violation of gender equality under Muslim Personal Law. Unilateral Talaq is not available for Muslim females but such facility is available for Muslim males.
- There are wide differences under the provisions of Hindu, Muslim, Christian and Parsi Laws in the matter of succession and guardianship. These

inequalities are needed to be removed urgently. For that purpose implementation of UCC is urgently needed in India.

- The Divorce Act, 1869 (applicable to Christians) contained various odd provisions related to divorce. Now it is amended by the Indian Divorce (Amendment) Act, 2001. But UCC is still needed to be implemented.

Implementation of UCC and Gender Justice

The Indian Constitution, in its Part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However it is only a directive principle of State policy. It is not enforceable in court of law. It is the prerogative of the State to introduce Uniform Civil Code. The Constituent Assembly Debates clearly show that there was a wide spread opposition to the incorporation of Article 44 (Art. 35 in the Draft Constitution).³ However, one of the most illustrious members of the Assembly, K.M. Munshi strongly felt that if the personal law of inheritance, succession etc is considered as a part of the religion, the equality of women can never be achieved.⁴

The Chairman of the Drafting committee Dr. B.R. Ambedkar stated that in our country there is practically a Civil Code, uniform in its content and applicable to the whole of the country. He cited many instances like Uniform Criminal Law, Transfer of Property and Negotiable Instruments Act which are applicable to one and all.

Some of the learned members however predicted that a stage would come when the Civil Code would be uniform and stated that power given to the State to make the Civil Code uniform is in advance of the time⁵. Dr. Ambedkar also opined that it is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage, the application of the Code may be purely voluntary.⁶ But unfortunately the common civil code / uniform civil code has not come in existence even today.

³ See CAD Book No.2, Vol. III pp. 538-552

⁴ CAD, Vol. III p. 548.

⁵ CAD, Vol. III p. 542 dt. 23rd Nov. 1948.

⁶ CAD, Vol. III p. 551.

Some Landmark Cases Laws

- *In Shah Bano Begum*⁷, with regard to the liability of a Muslim husband to maintain his divorced wife beyond 'iddat' period, who is not able to maintain herself, the Supreme Court held that Section 125 Cr. P.C. which imposes such obligation on all the husbands is secular in character and is applicable to all religious. The Court speaking through Chief Justice Y.V. Chandrachud held:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter..... There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different and on a common platform But, a beginning has to be made in the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the Courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of Courts to bridge that gap between personal laws cannot take the place of a common civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

- *In S.S. Chopra*⁸, D. Chinnappa Reddy, J speaking for the court referred to the observations of Chandrachud, C.J. in Shah Bano Begum's case and observed as under –

".....The present case is yet another which focuses.... on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of

⁷Mohd.Ahmed Khan vs. Shah Bano Begum, AIR 1985, SC 945.

⁸Ms. Jordan Deigndeh v. S.S. Chopra, AIR 1985 SC 935.

affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case....."

- *In S. Mudgal*⁹, a division of bench of the Supreme Court strongly advocated the introduction of a uniform civil code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous marriages circumvents Sec. 494 of I.P.C. Such marriages have been declared as bigamous and void by the court. The Court held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded.

However this latter direction was treated as "obiter dicta" by the court subsequently.

- In *Danial Latif*¹⁰, the Constitutional Bench of the Supreme Court upheld the Constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced women has right to maintenance even after Iddat period under the 1986 Act.
- In *Seema v. Ashwani Kumar*¹¹, the Supreme Court has held that all marriages, irrespective of their religious, be compulsorily registered. This was first step towards uniform civil code.
- In *Shayara Bano Case*¹², (popularly known as Triple Talaq Case), triple talaq is known as talaq-e-biddat or instant divorce or irrevocable divorce. It is a form of Islamic divorce which allows any Muslim man to legally divorce his wife by stating the word talaq three times in oral, written or more recently, electronic form.

One of the issues canvassed on behalf of the petitioners, which was spearheaded by the learned Attorney General for India, was on the ground, that the constitutional validity of the practice of 'talaq-e-biddat' – triple talaq, was in breach of constitutional morality. The question raised before us was, whether

⁹S. Mudgal v. Union of India, AIR 1995 SC 1531.

¹⁰ Danial Latif v. Union of India AIR 2001 SC 3262.

¹¹ AIR 2006 SC 1158.

¹² Shayara Bano v. Union of India and Others Writ Petition (C) No. 118 of 2016. (2017 Judgment.)

under a secular Constitution, women could discriminated against, only on account of their religious identity?

In Shayara Bano case, the five judge Constitution Bench by a 3-2 majority judgment said “There is no constitutional protection for triple talaq. In this landmark verdict, the Supreme Court held that instant triple talaq is “unconstitutional”, “arbitrary” and “not part of Islam”. There is no constitutional protection for instant triple talaq. The three judges (majority view) also said the practice of divorce through triple talaq is manifestly arbitrary and violative of the Constitution and must be struck down.¹³

Significance of the Judgment

- In this case the Supreme Court of India has exhaustively examined the nature and scope of various existing Acts, legislations, personal laws, constitutional provisions and International Conventions such as the Muslim Personal Law (Shariat) Application Act, 1937 / the Shariat Act, Section 11 of the Contract Act, 1872, the Dissolution of Muslim Marriages Act, 1939, various foreign legislations such as Code of Family Law 1984 as amended in 2005 (Algeria), Law of Personal Status 1929 as amended in 1985 (Egypt), Code of Personal status of amended in 1987 (Iraq), Code of personal status 1976 (Jordan), Code of Personal Status 1984 (Kuwait), Family Rights Law 1962 (Lebanon), Family Law 1984 (Libya), Code of Personal Status 2004 (Morocco), Law of Talaq 1935 (Sudan), Code of Personal Status 1953 as amended in 1975 (Syria), Code of Personal Status 1956 as amended by Law 1981 (Tunisia), Law of Personal Status 2005 (United Arab Emirates), Decree on Personal Status 1992 (Yemen), Law of Marriage 1974 (Indonesia), Marriage Regulations 1975 (Indonesia), Islamic Family Law Act, 1984 (Malaysia), Code of Muslim Personal Law 1977 (Philippines), Muslim Family Laws ordinance 1961 (Pakistan and Bangladesh), Muslim Marriage and Divorce Act, 1951 as amended in 2006 (Sri Lanka) etc., Section 125 of the Code of Criminal Procedure, Articles 14, 15(1), 21, 25, 26, 29, 32 and 44 of the Constitution, the Family Courts Act, 1984, ICESCR, UDHR, CEDAW & its optional protocol (1999), the Convention on the Political Rights of Women 1952, Universal Declaration on Democracy, 1997, the Second World Conference on

¹³ www.timesnownews.com

Human Rights, held at Vienna in June 1993, the Fourth World Conference on Women, held at Beijing in 1995, Uniform Civil Code (Article 44 of the Constitution of India), the Indian Penal Code, 1860, Article 372 of the Constitution of India, the Divorce Act, 1869, the Indian Divorce (Amendment) Act, 2001, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954, the Foreign Marriage Act, 1969, the Indian Divorce, 1869, the Hindu Marriage Act, 1955, the Hindu Adoptions and Maintenance Act, 1956 etc.

- The judicial pronouncement pronounced by the Court in the present case has encouraged and inspired the implementation and enforcement of Uniform Civil Code in India as prescribed by the constitutional makers under Article 44 of the Constitution of India. Article 44 is contained under Part III of Indian Constitution which is legally enforceable in nature. However, Uniform Civil Code has not implemented in India yet. Shayara Bano Case has paved a way for an implementation of UCC¹⁴ in India.
- The present judgment has encourages for the promotion of gender equality in India.
- Shayara Bano verdict is one of the most landmark verdicts pronounced by the Supreme Court of India in the field of women empowerment.
- Through this judgment the Supreme Court of India has protected the various rights of Indian Muslim women such as right to live with dignity, right to get protection from cruelty, gender equality etc. Right to equality and right to live with dignity are the valuable human rights as well as these rights are fundamental right enshrined under Part III of the Indian Constitution.

Need of Implementation of UCC

In Sharaya Bano judgment the Supreme Court of India has declared triple talaq as unconstitutional. But the Act for the abolition of triple talaq couldn't get passed yet. Other issues are polygamy, halala etc.

Implementation of UCC is urgently needed to remove religious inequalities such as triple talaq, pologamy, halala etc. It is also required to remove inequalities in

¹⁴ Uniform Civil Code.

the matters of succession, adoption, guardianship etc. prevailing among the Hindu, Muslim, Christian and Parasi religions.

Conclusion

From aforesaid discussion it can be said that, law cannot be applied uniformly to all the persons residing in India due to religious diversity etc. Hence the state is not in the position to Implement the provisions of Article 44 i.e. UCC. Besides this, various reservations are given to SC and ST and minorities to upbring their economic and social conditions. Hence implementation of UCC has not become possible in India yet.

In Shayara Bano judgment¹⁵, Indian Supreme Court referred a need of UCC in India. However, while delivering judgment, it has kept original Quran untouched and gave a judgment in favour of abolition of Triple Talaq i.e. Talaq-e-Biddat by keeping Talaq-e-Sunnat as it is. Implementation of UCC is a need of an hour as it is important to fulfill the concepts / tenets of unity in diversity, secularism and equality which are embodied in our Constitution. Supreme Court of India has ratified the concept of equality through an implementation of UCC in the first case i.e. Sarala Mudgal's Case.¹⁶ Implementation of UCC is crucial / important for abolition of polygamy and unilateral divorce. It is important for the removal of diversification of laws and rules prevailing amongst various religious. Uniformity in the laws which govern the people is the need of the time. UCC will serve a purpose of maintenance of true equality in the country.

Implementation of UCC in India will lead towards women empowerment by protecting their rights in the fields of marriage, divorce, maintenance and succession.

Thus, it is clear that, UCC is a step towards an establishment of equality including gender equality, a spirit of national integration and a true concept of secularism in India.

¹⁵ Shayara Bano v. Union of India (2017) 9 SCC 1.

¹⁶ Sarala Mudgal v. Union of India AIR 1995 SC 1531.

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