

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Uniform Civil Code and Freedom of Speech in India

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ABSTRACT

The argument regarding the Uniform Civil Code (UCC) touches a sensitive side and raises pertinent points, among others, relating to gender equality, freedom of speech, and religious freedom. Under Article 44 of the Indian Constitution, a set of laws is expected for all the people irrespective of any faith being observed in relation to private life about marriage, succession, or division. Opponents feel that a UCC would be dangerous to cultural traditions and religious freedom. However, proponents feel that it would uphold equality, secularism, and gender justice. This paper seeks to analyses the relationship between the UCC and the protection accorded to the basic right to freedom of speech under Article 19(1)(a) of the Constitution. The research further goes into the conflict between secular enactments and religious faith. It further digs into how media, the law, and the political debate are informing public opinion toward the UCC and determining whether such influences diminish people's liberties to freely endorse or oppose the policy. The paper aims at highlighting the impossibility of holding together religious pluralism with a common civil code in a culturally diverse society, such as in India, under the protection of the fundamental right to freedom of speech. To this end, it reviews cases and legal principles in the current political debates relevant to the controversy.

Keywords: Freedom of Speech, Gender Equality, Reforms, Public Debate and Uniform Civil Code (UCC),

Introduction

This paper deals with the association between India's Uniform Civil Code (UCC) and free speech by surveying the contestations and polemics between individual rights and religious freedom vis-à-vis the role of the state to enact laws governing private life that include marriage, inheritance, and property rights. A proposal for a uniform set of laws covering personal concerns (such marriage, divorce, inheritance, and adoption) for all citizens, regardless of their caste, religion, or community, is known as the Uniform Civil Code. To provide fairness for all residents, the state is encouraged to foster the adoption of a UCC under Article 44 of the Indian Constitution, which deals with the Directive Principles of State Policy. Nonetheless, it is up to the government's choice and is not required. India currently lacks a uniform civil code and has personal laws based on religion conventions (such as the Hindu Marriage Act, Muslim Personal Law, Christian Marriage Act, etc.).

In India, the introduction of a UCC has much controversy, and freedom of speech is regarded as one of the highly debated issues in the process. Advocates feel that a UCC would assure equal rights among all people, gender equality, and secularism. Opposers, often from religious groups, fear their religious liberties and customs would be infringed on. The media is crucial to influence public opinion and raise knowledge of UCC. However, the journalists and activists sometimes face restrictions of freedom of speech when they present views conflicting with dominant political or religious doctrines.

The chilling effect on free speech is a concern because activists who support the UCC, especially those from women's rights organizations, often face political resistance, societal backlash, and legal challenges. In addition to the relationship between freedom of speech and religious freedoms, which are protected by Article 25 of the Constitution. The UCC will therefore be important to the public discussion on the extent to which the government should intervene in matters that are left strictly to the religious domain, for people and organizations have diverse views on the subject. Given Article 25 of the Indian Constitution, which ensures freedom of conscience and the right to practice, promote, and profess one's religion, it is easy to argue that a UCC may infringe upon religious freedom. The UCC may threaten customs, according to some religious leaders and organizations. Since religious organizations aggressively advocate for the preservation of their own laws, arguments on UCC frequently touch on the freedom of speech of these groups.

One of the strong defences of UCC is that it can facilitate gender equality. For example, some Muslim women's rights advocates have argued that Islamic law discriminates against women in its personal provisions, including inheritance, divorce, and marriage. Conservative groups often oppose and threaten feminist organizations that support a UCC. It could be that the social and political setting might restrict the freedom of expression of the women's rights advocates. Various cases of application of a UCC and the potential implications are provided below: The Shah Bano case in 1985, for example, became highly debated in the debate on whether a UCC should replace Islamic personal laws when the Supreme Court of India ruled in

favour of a Muslim lady to claim maintenance after divorce. Many were opposed to the decision based on religion; this case led to debates on freedom of expression. Some political parties have demanded the implementation of the UCC, and its discussion has resurfaced into the political realm. Government participation in the discussions and their effect on free speech is vital when people oppose or support the adoption of a UCC.

It raises objections about the excessive intrusion that the state indulges in private and family matters. Some believe that the state should not implement personal laws that go against deeply held religious beliefs because it may construe as restricting freedom of speech and rights of the individuals. Both pro and anti-UCC activists exercise their freedom of speech by participating in demonstrations, discussions, and debates. A functioning democracy needs the freedom to voice opinion and criticize government policy about these sensitive topics. Analogous provisions of a UCC have been enacted in some countries, such as France and Turkey, where all citizens are mandated to follow one standard regarding personal matters. A comparative perspective may be framed by comparing the protections of free speech in these countries, particularly concerning personal law and religion.

Excessive intrusion into private and family affairs is what the participation of the state in passing a UCC raises concern for. Critics say that the state should not enforce personal laws that gravely go against profoundly held religious convictions, for fear that it may suppress free speech and individual liberties. Activists on both the pro and anti-UCC sides use their freedoms of speech to take part in demonstrations, conversations, and debates. Such a delicate subject needs freedom to voice opinions and criticize government policy. Laws like a UCC have been enacted in some countries, such as France and Turkey, which apply the same law to all people concerning personal matters. This can be done by going over free speech protections in these countries, especially regarding personal law and religion.

The Supreme Court along with other courts of India had passed many rulings regarding religious rights, gender, and personal enactment. The great cases that called out discriminatory norms, such as Sabrimala (2018) and Triple Talaq (2017), promoted the debate concerning UCC. It is equally important to assess the implications the decisions have had on the exercise of freedom of speech of every people and institutions vested in both persuasions. With some political parties framing the issue as one of nationalism and secularism and others as one of defending religious freedom, political discourse around UCC frequently coincides with broader ideological conflicts in India. It is therefore important to explore how this political discourse impacts the freedom of speech of activists and ordinary citizens.

There is an intrinsic, deeply embedded integration between individual rights, religious freedom, and the role of the state in this debate surrounding India's Uniform Civil Code and Freedom of Speech. It is in such crucial discussions that it's made possible to understand how a plural democracy strikes the right chord to find equilibrium between the demands for common rules advancing equality and justice and reverence for religious traditions. This discussion also demonstrates how one of India's most sensitive legislative reforms frequently employs (and sometimes limits) freedom of speech.

Literature review

A literature review on the "Uniform Civil Code (UCC) and Freedom of Speech in India" would normally address several subjects, such as: the constitutional provisions; the historical background; the arguments for and against the implementation of the UCC; and its relationship with the fundamental rights, in particular the right to free speech. UCC refers to a plan to replace religiously based personal laws (such as those governing marriage, divorce, inheritance, adoption, etc.) with a consistent set of rules that apply to all citizens, irrespective of their gender, race, or religion. Since the creation of the Indian Constitution, the concept of a UCC has been discussed in Indian legal and political circles. The founding fathers considered it an avenue for developing equality and national integration, under Article 44 of the Directive Principles of State Policy. In fact, as stipulated under Article 37, the UCC is purely a Directive Principle and cannot, in any circumstance, be a court-enforced directive. While it is subject to question which states are legally bound to apply it progressively and hence accomplish social reform, there remains no denying its importance.

Article 19(1)(a) guarantees freedom of speech and expression, but reasonable limitations under Article 19(2) apply, such as those concerning public order, defamation, obscenity, etc. As an integral part of democratic administration, the Constitution's drafters were keen on safeguarding individual rights, especially the right to free speech. Some scholars argue that the implementation of a UCC would infringe on the free speech and free expression rights of individuals who would like to express or practice their religious traditions publicly. Debates on changing or abolishing such customs as marriage and inheritance laws may trigger such conflicts. Supporters and opponents of the UCC often engage in heated public debates. However, there is a concern that freedom of speech may be compromised if the UCC is perceived as imposing certain religious or cultural standards because such debates can sometimes clash with other constitutional rights, such as religious freedom (Article 25). The media heavily influences the framing of the UCC and free speech. A great deal of research investigates whether media coverage of deliberations in UCC promotes reasonableness or breeds' discord.

Many other legal scholars, such as M.P. Jain and Granville Austin, think that adopting a UCC in India is a poor idea: 'individual rights may be violated by enforcing a universal code because personal rules are firmly ingrained in culture and religion'. Sociologists and political scientists have analysed the possible social effects of a UCC, including how it may affect women's rights and religious minorities. These debates often focus on whether the state should enforce the diversity of individual laws or implement a single, universal rule. Indian courts have played a significant role in examining the relationship between UCC and free expression. A few of the significant judgments are: Triple Talaq Judgment 2017, Sabarimala Case 2018, and ShahBano Case 1985, which brought forth the balancing between female equality, religious practices, and personal liberties. Religious communities generally protest UCC plans because they consider them violative of their cultural and religious freedoms. Such a tension from time to time even restricts open public discourse on the topic as people become hesitant to articulate opposition views as a form of potential speech restrictions. Now, the UCC has even become an election issue; in view of India's ties with the Hindus and the Muslims. This ideological polarization influences public debate and freedom of speech as political leaders and parties try to reshape the narrative to fit their vision of the nation's future.

The book by Austin, Granville (1966) offers a perceptive examination of the Indian Constitution covering its views on personal laws, secularism, and the Directive Principles of State Policy, including Article 44, which addresses the UCC. Jain, M.P. (2014) A comprehensive explanation of constitutional provisions relating to fundamental rights, personal laws, and the interaction between UCC and free speech. Choudhury, Dipika. Baxi, Upendra (1987) deals with the secular character of the Indian state and the difficulties of enforcing a UCC without violating the freedoms of speech and religion. The concern of (2019) is to examine how personal laws have changed in India and assess the arguments behind UCC and how they affect individual liberties. The better explanation of this would be by comparing the relationship of state law to individual freedom and freedom of expression to nations whose secular laws are applied by states, such as France or Turkey. Additionally, insight into how free speech was sustained or curtailed in other democratic countries with UCC-like laws may be helpful. Free speech protection in India and the presence of a UCC are in complicated relationship. Inasmuch as UCC looks forward to ensuring equality, failure to take serious consideration for free speech, religious practice, and cultural variety in the implementation of the UCC would be dangerous to individual liberties. Academics argue that more empirical study is needed to analyses how UCC impacts different groups in society, especially minorities and women, and how this relates to their freedom to voice differing opinions. Kholsa, Madhav (2015) examines the social and legal implications of UCC, considering its possible impact on individual laws and broader societal consequences. Raghavan, S. (2018) analyses whether public condemnation of personal laws violates freedom of speech and whether the right to freedom of expression conflicts with religious freedom, with specific reference to the UCC. Nussbaum, Martha C. (2007) It touches upon the w

M.P. Singh (2014) This article discusses the Indian Constitution's restrictions and freedoms of speech, as well as how legislation like the UCC may impact the public's perception of personal laws. Shyam Divan (2016) essay that thoughtfully considers the legal implications of the UCC for Indian society and freedom of expression. Articles on discussions about UCC and how these discussions affect the rights of an individual, free speech, and religion. The Hindu Opinion and special reports about how the debate around UCC is changing its dynamics and is impacting India's judicial system as well as how public discourse regarding free speech has changed. contains in-depth coverage of landmark judgments of courts including the Sabarimala Judgment and the Shah Bano Case.

Law Commission of India, Report on the Uniform Civil Code (2018). A comprehensive report by the government that assesses the need, feasibility, and potential challenges associated with implementing the UCC in India. This also includes matters raised by different organizations, which include religious liberty and freedom of speech. NCW Report on Gender Justice and the UCC. A study that examines the potential impact of a UCC on women's rights in India, examining issues of gender inequality and the ways in which the legal system can either promote or impede the right to free speech and expression on these topics.

Methodology

The objective is to analyses the social implications and legal structure of the UCC regarding free speech. The study might be both descriptive and analytical to describe the legal, constitutional, and social scenario of the UCC and analyses its impact on freedom of expression in India. The study would be a doctrinal and empirical research method with a qualitative approach. This will enable the study of legal texts, case laws, and historical processes besides public opinion and media discourses. This would enable understanding the influence of India's freedom of speech on the Uniform Civil Code. Content analysis, interviews, and surveys would be conducted for the study.

Data Collection Methods

Primary Sources: Articles 44 (UCC) and 19 (Freedom of Speech) of the Indian Constitution. Judicial Pronouncements: Significant precedent-setting cases like the Triple Talaq Case (2017), the Shah Bano Case (1985), the Sabarimala Case (2018), etc. Government Reports like National Commission for Women (NCW) reports and Law Commission reports, particularly the one on UCC.

Secondary Sources: Articles related to the legal and sociological texts of UCC, Freedom of expression, Personal laws, and religious freedom Works by scholars on Fundamental rights and UCC-Religious faiths and legislation Personal legislation on account of debates and views in the Constituent Assembly debates and writings during pre-independence Indian Constitution drafting Newspaper, television channel and website with debates, views, articles, and commentary on UCC and free speech.

Qualitative Data Analysis

Critical research on statutes, case law, judicial opinions, and constitutional provisions will be discussed in great depth. Therefore, it will make it much more comprehensible regarding how the UCC is designed to accommodate equal gender representation, free speech rights, and rights of religion. Study some landmark cases where such judges analysed arguments that were in favour of right-to-free speech with what can be justified using the UCC. Analyse the wider implications for Indian society and the judgments of the courts in exercising these fundamental rights. Compare how other countries handle UCC and freedom of speech (such as France, Turkey, and Israel) to gain an understanding of its usage in India. Analyse the reflections of debates and discussions concerning the UCC regarding freedom of speech and religious freedom in public discourse (news items, editorials, and opinion pieces). Whether the representation of sensitive topics, such as personal laws or religious practices, by the media in the country is effective enough to influence public opinion or suppress free speech rights.

Empirical Data Collection

Conduct surveys or interviews with judges, practitioners, and constitutional law experts. scholars who specialize in rights regarding women, religious freedom, or constitutional law. Take public opinion polls to know how people are viewing their thoughts about the UCC concerning freedom of speech, their religious beliefs, and individual rights. Discuss how UCC debates often centre on free speech concerns, like political activism, legislation amendments, and public protest. Analyse how public debate on these topics is framed and the extent to which speech is either encouraged or restricted.

Data Interpretation

Sort and analysis's themes that appear in legal writings, media conversations, and interview answers. The two possible major themes are as follows: The potential interference the UCC could have with religious practices and whether this could violate free speech. How the UCC can protect free speech rights concerning delicate subjects like divorce, inheritance, and marriage laws, yet promote gender equality. Conflict between the necessity of national integration and individual rights, particularly expression. analyses conflicting positions in the legal argumentation, political ideology, and popular opinion for relevance to freedom of speech. This may involve, for instance, how polarizing the debates over UCC are among political and media circles. Although UCC aims at harmonizing personal laws, freedom of speech allows people to express their opinions, which may be that a UCC should be enacted. Arguments regarding the UCC have at times raised questions on the limits of free speech when discussing personal laws and religious activities. The Supreme Court decreed that notwithstanding people's basic right to expression, such freedom has to harmonize with people's rights but also with paramount values like equity, non-discrimination, and laicity. This implies that any kind of discourse, even if discussing a Uniform Civil Code, could well be circumscribed in areas where such would jeopardize public peace or even incite hatred based on caste or religion as the courts seem to understand such reasonable restrictions allowed by the Constitution.

Shah Bano Case (1985) – Mohd. Ahmed Khan v. Shah Bano Begum, In the framework of the UCC discussion, this case is among the most important. In accordance with Section 125 of the Criminal Procedure Code (CrPC), which stipulates that a husband must give maintenance to his divorced wife if she is incapable of supporting herself, Shah Bano, a Muslim lady, requested maintenance after her husband filed for divorce. Even though Muslim personal law, or Shariat, does not require a divorced husband to pay maintenance after the iddah period, which is the waiting time after divorce, the Supreme Court ruled in favour of Shah Bano and awarded her maintenance. The Court laid emphasis on having a uniform body of laws pertaining to private matters, which could mean that the rules like maintenance should be applicable uniformly to everyone, irrespective of their religion. It was seen as an effort towards women's equality which the UCC could help with. The Government then passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, thus also weakening the judgment of Shah Bano and relieving Muslim women of its consequence, as this judgment was vociferously political in nature with the Muslim body being the principal opponent.

Sarala Mudgal Case (1995) – Sarla Mudgal v. Union of India, Bigamy was at the centre of this case, namely whether Indian law allowed for the prosecution of a Hindu man who had converted to Islam and remarried. A precedent has been established by the Supreme Court stating that a person converting to Islam to avoid Hindu marriage laws and marrying another individual is guilty of bigamy and should be dealt with under the Indian Penal Code. The petitioner, Sarla Mudgal, was married earlier to a man who converted to Islam and married another woman. It might be a means of integrating personal laws and ensuring gender equity by having a Uniform Civil Code as the judgment brought to the forefront the contradictions and inconsistencies between different personal laws such as Muslim, Hindu, etc. The Court again raised the issue of the implementation of a UCC to ensure equality before the law and uniformity for all people.

John Vallamattom (2003) – John Vallamattom v. Union of India, the court determined that the Indian Succession Act's restrictions regarding Christian inheritance and religious customs were discriminatory. It was under the Indian Succession Act Section 118 that prohibited some of the Christian denominations from taking inheritance over any property. The Supreme Court held that Section 118 of the Indian Succession Act was discriminatory, and in doing so it established that fragmented individual legislation making such divisions among religious communities offend the principle of equality of the constitution. In doing so, the judgment went on to mention the possible benefits of a Uniform Civil Code when it stated the need for consistency in the laws governing inheritance and property rights.

Triple Talaq Judgment in the Year 2017 – Shayara Bano v. Union of India: This case centrally dealt with the question of whether triple talaq, which is the Islamic process of divorce wherein a man pronounces his wife "talaq" three times to complete the divorce process, should be allowed and continued. It was challenged on grounds of it being an illegal practice which was against women's rights. The Supreme Court pronounced the practice illegal in a landmark 3-2 judgment. The declaration outlawing triple talaq helped herald changes in personal legislation toward bringing about gender equality and justice. The judgment did not explicitly comment on the UCC but seemed to affirm that religiously inspired personal laws regularly violate constitutional norms and that a UCC can provide an important resolution of contradictions by ensuring personal laws embody equality and justice assured by the Constitution.

Sabarimala Case (2018) – Indian Young Lawyers Association v. State of Kerala, The Sabarimala Case addressed religious practices and gender discrimination, with wider implications for how equality may be affected by personal laws based on religious practices, even if its primary focus was on women's admission to the Sabarimala temple. The Supreme Court declared it unlawful for women of menstrual age to enter the shrine. It was one such case that significantly raised questions of constitutional review on religious personal laws, particularly concerning gender equality. The ruling demonstrated the Court's willingness to address practices that uphold discrimination and inequality in support of the claim that personal laws, such as those on marriage and inheritance, should be in line with constitutional principles, such as equality, which the UCC could assist in enforcing.

Keshavananda Bharati Case (1973) – Keshavananda Bharati v. State of Kerala, this decision is important in the framework of Indian constitutional law even if it is not specifically regarding the UCC. Parliament cannot change the fundamental framework of the Constitution, the Supreme Court decided. The case brought out how imperative it was to maintain the very core of equality and justice that the Constitution enshrines. Proponents of the enactment of a UCC have capitalized on the focus of the Court on the constitutional structure thus far to argue that a uniform body of law on personal matters does not violate the principles of gender equality and secularism embodied in the Constitution, and that it cannot be altered on religious grounds.

Hypothesis Development, Ethical Considerations and Limitations

Because individual freedom and state-imposed legal frameworks clash, the introduction of a Uniform Civil Code (UCC) may present obstacles to freedom of speech, particularly for religious minorities. When people, especially women and religious minorities, voice opposing opinions on religious laws, the debate surrounding the UCC may result in the repression of free speech. Ensure that all interviewees and survey respondents are clearly explained the purpose of the study and whether they can give consent. Maintain confidentiality of sensitive data and anonymity of participants of the study. Be neutral in how information obtained from different sources is evaluated by keeping an open mind about many perspectives on UCC and free speech. collecting primary data from judicial or governmental sources is difficult for security or privacy concerns. The polarization of media representations of UCC may compromise the objectivity of media analysis results. It could be challenging to get a definitive decision due to the varying opinions

Expected Outcomes

Detailed understanding of the relationships between the UCC and freedom of speech being a fundamental right in India- especially regarding the personal laws or religious opinion in the context of the right. Provide policy directions to policymakers that would enable achieving a balance where the implementation of the UCC does not stand in conflict with the rights based on freedom of speech. Contribute to legal scholarship and public debate regarding change in personal law and fundamental rights by providing thoughtful commentary on the future of the UCC.

Recommendations

The public and civil society organizations, members of the legal professions, and religious communities must be fully consulted before implementing the UCC. Opportunities should be encouraged to have open discussions and debates to understand the issues that different communities are facing and to attempt to find common grounds. A step in getting popular support would be public education on potential benefits of a UCC in matters of gender justice and equality. A more educated discussion can be promoted by providing forums for people to gain knowledge about the intricacies of personal laws and how they affect people, especially women.

Open discourse and debate concerning the UCC should be afforded protection by government and the justice system. A right to criticize and voice controversy regarding the new law should still not be outlawed, not even if most voices are stridently arguing or criticizing its introduction. Free speech is very important, but it has to be balanced against laws that prohibit hate speech, incitement to violence, or any other form of communication that unfairly targets certain groups of people. Hate speech laws should be fair, transparent, and not designed to suppress reasonable criticism.

Conclusion

The Uniform Civil Code and Freedom of Speech are two pillars that comprise the heart of India's constitutional structure. These two principals were born out of the ideals of justice, equality, and individual rights. It seeks to enhance national integration and eradicate gender disparity by endorsing a uniform religion-neutral legal order. In doing this, it must be weaved into the cultural and religious texture of India so that it neither incurs the opposite nor hostility of different communities. The UCC should be implemented with sensitivity to the different cultures and religions in the nation, though it is moving toward equality and justice. The right to free and open discussion of these very complex issues may also be achieved through the safeguarding of freedom of speech. In order for this to occur within the context of India, the approach should be cautious, inclusive, and balanced to ensure the UCC and freedom of speech are safeguarded. Perhaps a way forward which respects unity and diversity can emerge in India, not through judicial decisions but by setting up an arena for focused debate and treating the issues integrally. Balancing the quest of India so that freedom of speech remains very strong and untouched, yet successful implementation of UCC for social justice and equality, is what the task calls for. A cooperative, open strategy shall be essential if both objectives must be met, without compromising on the pluralism that characterizes the Indian spirit.

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