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## UNIFORM CIVIL CODE: IMPLEMENTATION IN INDIA

### ABSTRACT

The Uniform civil code has been defined under Article 44 of the Directive Principles of the State Policy, which states; The State shall endeavour to secure for the citizens a ‘uniform civil code’ throughout the territory of India. The main aim of uniform civil code is to replace the personal laws with unified system of laws with a common set of rules governing every citizen. The paper examines the nature, meaning and ideas behind uniform civil code with the help of historical context, constitutional provisions, societal implications, and political interference surrounding the UCC. It lays emphasis on the advantages and disadvantages, of Uniform civil code in a diverse country like India. The paper provides insights into the potential impact of Uniform civil code on gender equality, cultural diversity, individual rights and national integration. Additionally, it discusses the role of the judiciary in advancing the debate and potential pathways for navigating the complexities of implementing a UCC in India. While making this paper, several journals, articles and research papers were referred and taken into consideration. Internet and e-books have also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

### Keywords

Uniform civil code, Personal laws, individual rights, directive principle of state policy, national integration.

## **INTRODUCTION**

The Uniform Civil Code (UCC), as delineated in Article 44 of the Indian Constitution within the Directive Principles of State Policy (DPSP), mandates the state's responsibility to ensure the successful implementation of a standardized civil code applicable to all citizens residing across India. This principle is often summarized as "One Nation-One Law," eliminating the religious affiliations. The promise to pass the UCC stems from Article 44 of the Constitution of India, a directive principle saying, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." This Article was adopted by the Constituent Assembly on November 23, 1948, after a spirited debate. <sup>1</sup>The primary objective of the Uniform Civil Code is to supplant personalized legal systems based on religious scriptures and customs with a unified set of regulations applicable to all citizens. The main purpose of UCC is to unify personal laws, mainly related to marriage, divorce, inheritance, adoption, and maintenance, into a uniform code applicable to all citizens. UCC came forward as an important issue in the famous case of Mohd. Ahmed Khan vs Shah Bano Begum and Ors<sup>2</sup> in 1985 where the Supreme Court recommended that a uniform civil code should be set up. Although the UCC is included as a directive principle of state policy and over the 73 years it has not been implemented in the whole of India, its implementation has been a subject of debate and controversy in Indian society and politics.

## **HISTORICAL CONTEXT OF THE UNIFORM CIVIL CODE IN INDIA**

The Uniform Civil Code (UCC) has been a subject of debate and discussion in India for many years, but it has not been officially tabled as a bill in the Parliament. Various governmental organisations and political leaders have raised concerns related to the implementation of Uniform civil code. There have been certain instances when the need of uniform civil code has been stressed upon. Some of the key law commissions which have examined the need of UCC in India are; The 2nd Law Commission Report of 1835 stressed the need for uniformity in codification of Indian Laws relating to crimes, evidences and contracts but recommended that codification should not extend to matters like the personal laws of the Hindus and Muslims

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<sup>1</sup> Ajoy Sinha, How the Uniform Civil Code came to be included in the Indian Constitution, Feb 8, 2024, <https://indianexpress.com/article/explained/how-the-uniform-civil-code-came-to-be-included-in-the-indian-constitution-9147625/>

<sup>2</sup> AIR 1985 SC 945

which derived their authority from their respective religions.<sup>3</sup>The First Law Commission of independent India, headed by M. C. Setalvad, recommended the implementation of a Uniform Civil Code in its 1955 report. The importance of a UCC has been highlighted in the report for achieving national integration and ensuring justice and equality for all citizens. The 82nd Law Commission, which was headed by Justice D. A. Desai, submitted a report in 1980 titled "Proposals for the Amendment of the Constitution of India." The commission recommended the implementation of UCC to promote gender equality and social justice in the Indian society. Many other law commissions such as 71st Law Commission (1978) and 207th Law Commission (2008) gave relevant recommendations regarding the validation of UCC in India.

## **STATUS OF PERSONAL LAWS IN INDIA**

In the context of India, personal laws are the laws that govern matters pertaining to personal relationships based on an individual's religious beliefs or community. These laws differ from public laws that apply uniformly to all citizens, regardless of their religious beliefs. Personal laws in India primarily cover areas such as marriage, divorce, inheritance, adoption, and maintenance. India being a country with diversified religions, the religious texts, customs, and traditions, vary according to different religious communities, including Hindu, Muslim, Christian, Sikh, and others. Each religious community has its own set of personal laws and rules that govern the rights of individuals within that community. The personal laws for some of the major religious communities in India are:

- **Hindu Personal Laws**

These laws are governed by various statutes such as the Hindu Marriage Act (1955), Hindu Succession Act (1956), and Hindu Adoptions and Maintenance Act (1956), these laws regulate marriage, divorce, adoption, inheritance and maintenance among Hindus, Buddhists, Sikhs and Jains.

- **Muslim Personal Laws**

These laws are Based upon the Sharia principles, they cover matters related to marriage, divorce, inheritance, and maintenance. These laws are primarily governed by Muslim Personal Law Application Act (1937) and others.

- **Christian Personal Laws**

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<sup>3</sup> Tanya Sharma, "Uniform Civil Code: A Detailed Analysis", Sept 12, 2020, <http://www.penacclaims.com/wp-content/uploads/2020/09/Tanya-Sharma.pdf>

These laws are governed by statutes such as the Indian Christian Marriage Act (1872), Indian Divorce Act (1869), and Indian Succession Act (1925), these personal laws regulate marriage, divorce, succession, and adoption among Christians.

- Sikh Personal Laws

These laws are governed by the Sikh Gurdwaras Act (1925) and others. These personal laws mainly pertain to marriage and are recognized under Indian law.

- Parsi Personal Laws

These laws are regulated by the Parsi Marriage and Divorce Act (1936), Parsi personal laws govern matters related to marriage, divorce, and inheritance among the Parsi community.

The personal laws in India have been a subject of debate and controversy, particularly regarding issues of gender equality and secularism. The fundamental idea behind a UCC is to establish a single set of laws governing personal matters like marriage, divorce, inheritance, and adoption, applicable to all citizens regardless of their religious affiliations. However, the road to implementing such a code is riddled with complexities and sensitivities, given India's diverse religious landscape.<sup>4</sup>

## **IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIAN STATES**

- India annexed Goa in the year 1867, the existing Portuguese Civil Code, 1867 was not altered. It applies to all the Goans living in the state irrespective of their religion. The registration of marriages is made compulsory under the Goan Code so that the disputes which may arise can be resolved by the law. Consent of men and women is required before marriage. The Goan code allows for a prenuptial agreement which can alter the ratio of the distribution of assets. Muslim men whose marriages are registered do not have the right to polygamy in Goa.<sup>5</sup> In the case of divorce, each spouse is entitled to half of the property and in the case of death of both the spouses, the property is equally

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<sup>4</sup> The economic times, What's Uniform Civil Code: What does Constitution say about UCC and why it's so controversial in India, Feb 06, 2024, <https://economictimes.indiatimes.com/news/how-to/what-is-uniform-civil-code-what-does-constitution-say-about-it-why-its-such-a-controversial-topics-in-india/articleshow/101348565.cms?from=mdr>

<sup>5</sup> Pooja Arora, Uniform Civil Code in Goa: a case study, Jan 17, 2021, <https://blog.ipleaders.in/uniform-civil-code-go-a-case-study/>

divided amongst the surviving members. Both male and female heirs have equal rights for the inheritance of property.

- The UCC adopted by the Uttarakhand Assembly aims to consolidate the personal laws relating to marriage, adoption, divorce among people of all communities. Uttarakhand has become the first state since pre-Independence Goa to adopt a uniform code. The UCC adopted by the Uttarakhand Assembly aims to unify the laws pertaining to marriage, divorce and adoption among all the communities. The State has become the first since pre-Independence Goa to adopt a uniform code. It is aiming to formalise live-in relationships through registration and prescription of a three-month prison term for non-registration of the same. It contains various positive features such as conferring legitimacy on children born of live-in relations and mandating maintenance in the event of desertion.<sup>6</sup>

## **THE CONFLICT OF VISION BETWEEN PERSONAL LAWS AND IDEA OF UNIFORM CIVIL CODE**

The analytical and judicious discussion of the much debated and controversial issue of the need of common legislation for all the citizens of India irrespective of their religion or race or ethnicity in compliance with the Constitutional Mandate under Article 44. This is also be argued that in almost all the countries including many Muslim countries, personal laws have been subjected to suitable change in view of the prevalent local conditions. It is also be brought in consideration that unfortunately, the conflict between common law and personal laws has generated an unavoidable and spiteful controversy, which has been emerged not from reasons, but from misinterpreted religious sentiments.<sup>7</sup> The issue of UCC has been made a very sensitive topic by various religious authorities and secular sections of our society. A very prominent reason behind the same could be politics. Various communities and the political parties in India have been raising this issue for political benefits. The question arises is, whether the implementation of Uniform civil code enhance the societal order or not.

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<sup>6</sup> The Hindu, Towards uniformity: On the UCC adopted by the Uttarakhand Assembly, Feb 9, 2024, <https://www.thehindu.com/opinion/editorial/towards-uniformity-on-the-ucc-adopted-by-the-uttarakhand-assembly/article67825238.ece>

<sup>7</sup> Ms. Sonam Singh, UNIFORM CIVIL CODE IN INDIA: URGENT NEED OF HOUR FOR HARMONIZATION, <https://ijert.org/papers/IJCRT2208583.pdf>

## **POSITIVES BEHIND THE UNIFORM CIVIL CODE**

- **Modernisation and development**

Modernisation refers to a process, in which the thinking pattern of people becomes more rational. It evolves adoption of various ideals and principles which leads to progress and development of a society. Uniform civil code would enhance progress in the way of thinking among people and lead to development.

- **Equality among people**

Uniform civil code would ensure equal treatment under the law for all citizens, irrespective of their religious affiliations and eliminate differential treatment among people embedded within personal laws and promote equality before the law.

- **Secularism**

The implementation of uniform civil code would lead to enhancing the true essence of secularism making the apt for making laws pertaining to equality among people. The secular legal system would make laws religion does not influence legal rights and obligations.

- **Simplicity and clarity**

Often, the personal laws are conflicting the ways of practises and rituals followed. By the implementation of uniform civil code, the laws would be applicable to all citizens and reduce the complexities. It would make the legal system more accessible and understandable.

- **Gender Equality**

The implementation of Uniform civil code would ensure gender neutral laws, helping to eradicate gender discrimination in India.

- **National integration**

The uniform civil code would lead to a single set of laws for all the people, irrespective of their religious backgrounds. The true meaning of 'unity in diversity' would shine with the implementation of uniform civil code.

There are various other merits associated with the implementation of uniform civil code in India. It an issue of debate and discussion because the policy of UCC, not only comes with positive benefits but de-meris as well.

## **NEGATIVES BEHIND THE UNIFORM CIVIL CODE**

- **Legal complexities**  
In a big country like India, there is presence of various personal laws governing different sections of societies. Introducing Uniform civil code would require significant legal reforms and amendments, which could be a lengthy and difficult process.
- **Conflict between various religious affiliations**  
The diversity in India would become a barrier during the implementation of uniform civil code. Different religions have their own distinct traditions, beliefs, and practices. Implementing a UCC could be perceived as an infringement on religious freedom, leading to resistance and chaos.
- **Impact on minorities**  
The Minority religious communities and groups, often have their own personal laws, may feel alienated or disadvantaged by the imposition of uniform civil code. This would exacerbate tensions and divisions within society.
- **Political divisions**  
In the thirst of power, the political leaders would take advantage of the situation to gain people's trust and votes. The differing opinions among political parties and groups could lead to political polarization and hinder consensus-building on other important issues.
- **gender-justice challenge**  
upholding the gender-neutral laws and promoting equality among people can become a difficult task leading to complexities.
- **Enforcement policies**  
The enforcement of uniform civil code would be a difficult task because taking away the practises and traditions people follow since time immemorial would lead to unrest and chaos in the society.

## **JUDICIAL INTERPRETATION OF UNIFORM CIVIL CODE IN INDIA**

There have been various judgments giving different interpretations about the term 'uniform civil code' laid in article 44 of Indian constitution.

- In the case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)<sup>8</sup>, also known as Shah Bano case, dealt with the issue of maintenance for Muslim women after divorce. The Supreme Court's decision in favour of Shah Bano Begum's right to maintenance led to various debates on the need for a uniform law governing maintenance across all religious communities. The decision was criticised by Muslim leaders, yet it is considered as one of the landmark judgments leading the path to gender justice and morality.
- In the case of *Sarla Mudgal v. Union of India* (1995)<sup>9</sup>, the Supreme Court addressed the alarming issue of bigamy and conversion to Islam for the purpose of having a second marriage while the first marriage was residing. The Court highlighted the need for a Uniform civil code, in an indirect manner to address issues of bigamy and polygamy across various religious communities.
- In the case of *Shayara Bano v. Union of India* (2017)<sup>10</sup>, also known as the "Triple Talaq case," is one of the landmark cases which revolved around the constitutional validity of triple talaq (talaq-e-biddat) in Muslim personal law. The Supreme Court held the practice of triple talaq unconstitutional, saying that it violated the fundamental rights of Muslim women. The judgment led to debates on the need for a UCC to ensure gender equality and justice in personal laws. The Muslim leaders criticised the judgment, but the decision was important for enhancing the gender equality in India.
- There have been various other cases such as *Danial Latifi and another v. Union of India*<sup>11</sup>, *John Vallamattom v. Union of India*<sup>12</sup> and many others.

The judgements do not directly, address the issue of uniform civil code but lays emphasis on various other aspects such as gender equality, gender justice, and others. There haven't been specific judicial cases in India directly related to the implementation of a Uniform Civil Code uniform civil code, however, there have been several landmark judgements and debates that refer to the principles and objectives emphasising the uniform civil code.

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<sup>8</sup> *Mohammad Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 55

<sup>9</sup> *Sarla Mudgal (Smt.), and others v. Union of India and others* AIR 1995 SC 1531

<sup>10</sup> *Shayara Bano v. Union of India* Writ Petition [C No. 118 of 2107]

<sup>11</sup> *Danial Latifi and another v. Union of India* (2001) 7 SCC 740

<sup>12</sup> *John Vallamattom v. Union of India* 2003 (5) SCALE 384.



## CONCLUSION

One of the main essential of Uniform Civil Code is unifying all the “personal laws” and to have one set of laws, which are secular in nature, dealing with these aspects that will apply to all citizens of India irrespective of the community or religion they belong to. As the Indian Constitution itself makes clear, the directive principles “shall not be enforceable by any court”. Nevertheless, they are “fundamental in the governance of the country”. This shows that although our constitution itself says that Uniform civil code should be implemented in some manner but its implementation is not mandatory. Hence, the debate on having a uniform civil code for India still continues<sup>13</sup>. In Preamble of the Indian Constitution there is a term secular, which means state should not interfere in matter of individual’s religion. On the other hand, all the citizens of India are granted freedom of religion. The statements being contradictory in nature, makes the implementation of uniform civil code more complex and difficult. The religion is a matter of individual faith which cannot mixed with secular activities and can be regulated by the State enacting a law which is already held by the Supreme Court in the case of S.R. Bommai v. Union of India<sup>14</sup>. In this case, the court held that, Secularism is one of the basic features of the Constitution and is a positive concept of providing equal treatment to all religions.

Hence, the implementation of uniform civil code is the need of the hour as it would reduce aggressive chauvinism in India and grant equal status to all the citizens. But due to the presence of diversified religions, it would be

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<sup>13</sup> Satyam Singh & Shobhitabh Srivastav, UNIFORM CIVIL CODE: A CRITICAL STUDY OF INDIVIDUAL RIGHTS AND THE ROLE OF SECULAR STATE, <https://jcil.lsyndicate.com/wp-content/uploads/2023/06/Satyam-Shobhitabh.pdf>

<sup>14</sup> S R Bommai vs Union of India, 1994 AIR 1918, 1994 SCC (3) 1

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