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An Overview of India's Uniform Civil Code

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ABSTRACT

Secularism is a fundamental component of the Indian Constitution since India is a secular nation. Secularism is a steadfast conviction that religion has no place in government, schools, or any other type of organization. The principle of maintaining equality and justice for all state citizens, regardless of caste, colour, creed, religion, etc., can be used to deduce the relationship between secularism and a unified civil code. Additionally, a legal framework known as the uniform civil code is being suggested to establish and enforce personal laws on all state citizens, independent of distinction. As a result, the author will attempt to provide a general review of the Uniform Civil Code's current condition in India, as well as its historical development, constitutional viability, and potential implementation difficulties.

Keywords: *Uniform Civil Code, UCC, personal laws, UCC in India.*

I. INTRODUCTION

The two universal principles of gender equality and justice must be equally and freely available to everyone and must also be accessed, adhered to, and gained by all state citizens, but the actual condition of affairs suggests that things may be rather different. The Uniform Civil Code is inextricably linked to these universal ideas. The Uniform Civil Code means a uniform personal law on such matters as marriage, divorce, maintenance, adoption, guardianship, and succession, regardless of one's religion—as it exists in most countries and indeed even in Goa, a legacy of Portuguese.² In India, the same has been a major topic since 1840. Being a secular nation, India's Constitution includes secularism as a fundamental principle. A strong conviction known as secularism holds that no state, educational institution, or other organization should be influenced by religion. Even if we talk about secularism, cases of gender discrimination and injustice based on religion have existed since the dawn of civilization. The UCC in India is necessary to eliminate these discrepancies. Although there have been ongoing efforts to apply the code in the nation, there have also been numerous obstacles that have prevented its successful implementation.

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² Leila Seth, *A Uniform Civil Code: towards gender justice*, 31 INDIA INTERNATIONAL CENTRE QUARTERLY, SPRING 40, 46 (2005), <https://www.jstor.org/stable/23005979>.

II. THE IMPACT OF THE INTRODUCTION OF THE CIVIL CODE

The civil code is a set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to property, etc.³

In addition, if a common civil code is successfully adopted in India, it will cover the personal laws of all the main and small religious sects in the nation. However, if properly implemented, it will also strengthen the nation's residents' sense of brotherhood and unity.

(A) Background and origin

The foundation of the Uniform Civil Code dates back to the period when England controlled India and it was a significant component of the British Empire. Through the Lex Loci report, the British government codified the laws pertaining to crimes, evidence, and contracts in 1840, but purposefully chose not to do the same for the personal laws of the nation's numerous religious communities. The major goal of it was to stir up discord among the nation's population over matters of religion, which helped them develop their divide-and-rule strategy. The British government and the East India Company employed the well-known "Divide and Rule" strategy to divide undivided India into Hindustan and Pakistan, two powerful states. Additionally, during that time, religious doctrines and rituals played a significant role in determining how notions like marriage, divorce, succession, adoption, and maintenance should be understood and practiced. The panchayats of that time also used these religious laws from different religious sects to settle a variety of civil conflicts. Hindu religious texts, which also applied to Sikhs, Jains, and Buddhists, and the Sharia laws of Muslims, respectively, ruled the Hindus, including Sikhs, Jains, and Buddhists. The administration of these civil concepts, such as marriage, adoption, and divorce, among others, gave rise to a number of social divisions that had an impact on the fundamental ideas of gender equality and justice, leading to a highly complex situation. For the first time, a standard civil code was needed but couldn't be implemented. As time went on, people began to become outraged and demand justice and equality because women of different religions and members of lower castes were the major victims of these unwelcome religious distinctions. As a result, laws like the Indian Succession Act of 1865, which ruled women's economic security, and the Indian Marriage Act of 1864, which supervised Christian women's marriages, were passed. Several laws, including the Hindu Widow Remarriage Act and the Hindu Inheritance (Removal of Disabilities Act), were later passed as a result of reform

³ Shabbeer Ahmed and Shabeer Ahmed, *Uniform Civil Code (Article 44 Of The Constitution) A Dead Letter*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE 545, 546 (2006), <https://www.jstor.org/stable/41856241>.

initiatives led by Ishwar Chandra Vidyasagar. The majority of these laws, which were only for Hindus, improved the status of Hindu women in society while continuing to victimize and oppress Muslim women. The startling reality is that these disparities still exist today, and Muslim women are still punished for them. Post- Independence the situation was found to be changing, as in the year 1946 the Constituent Assembly was set up to frame our Constitution in Independent India, which consisted of two types of members: one who was a proponent to reform society by adopting the Uniform Civil Code, such as Dr B. R. Ambedkar, and second those who were essentially Muslim representatives who advocate personal laws.⁴ Following the discussion, only one specific clause, in conformity with Article 44 of Part IV of the Indian Constitution, was added to the Constitution.

III. ILLUSTRATIVE CASES SHOWING THE NEED FOR UCC

The significance of UCC is illustrated by several significant cases, including:

1. Mohd. Ahmed Khan vs Shah Bano Begum (1985)⁵

In this instance, Shah Bano Begum, a 72-year-old woman, was denied maintenance and was divorced by her husband using triple talaq, a common Muslim custom. Her husband Mohd. Ahmed Khan, a lawyer by trade, then filed an appeal in the nation's highest court, where the judge ordered Mr. Khan to pay his wife maintenance as a result of the injustice she had experienced. The UCC and its execution were significantly impacted by this case. The need for a Uniform Code was also recognized by the nation's top court. Following this momentous decision, protests, meetings, and discussions took place around the country. In response to demand, the then-government passed the Muslim Women's (Right to Protection on Divorce) Act (MWA) in 1986, nullifying Muslim women's access to Section 125 of the Criminal Procedure Code.

2. Sarla Mudgal vs Union of India (1995)⁶

The impact of this case on emphasizing the need for the code is equally significant. The question, in this case, concerned whether a Hindu spouse who had been married under Hindu law might also join Islam and therefore perform a second marriage. The court concluded that only the causes stated in the Hindu Marriage Act of 1955 are valid grounds for annulling a Hindu marriage that has been solemnized by Hindu law. A second marriage that is celebrated

⁴ Saman, *Uniform Civil Code In Foreign Countries: Its Evaluation From The Perspective Of India*, LEGAL SERVICES INDIA E-JOURNAL (Jul. 16, 2023, 6:15 PM), [Uniform Civil Code In Foreign Countries: Its Evaluation From The Perspective Of India \(legalserviceindia.com\)](https://legalserviceindia.com)

⁵ Mohd. Ahmed Khan v. Shah Bano Begum and others, AIR 1985 2 SCC 556

⁶ Sarla Mudgal v. Union of India, AIR 1995 SCC 1531.

after converting to Islam would be prohibited by section 494 of the Indian Penal Code (IPC)⁷, as the law does not consider the Hindu marriage to be nullified simply by converting to Islam and being married again.

IV. CHALLENGES ASSOCIATED WITH THE UNIFORM CIVIL CODE

Several obstacles are standing in the way of the country's adoption, enactment, and implementation of the Uniform Civil Code. Minority communities in the state are primarily affected by these issues, which, if ignored or given insufficient priority, could lead to political upheaval. Aside from being unfair to minorities, ignoring these issues would also prevent the pursuit of justice and gender equality.

These problems mainly include the following: -

(A) Constitutional questions:

The enactment and implementation of UCC in India lead to various contradictions with the constitutional provisions. The implementation of UCC shall also contradict the fundamental right of religious freedom guaranteed under Article 25 (Freedom of conscience and free profession, practice, and propagation of religion)⁸ and Article 26 (b) of the Indian Constitution⁹. The ideal of secularism cannot be achieved unless the right to religion and certain conventions based on religion give a place of preference and permanence to the directive contained in Article 44 of the Constitution. Therefore, it is the utmost need of the present times to achieve uniformity in social relations, which would be the foundation to build a unified, integrated, and strongest democracy in the world. Then comes the glorious suggestion of the Supreme Court to enact a uniform civil code to strengthen the feeling of oneness among all religious sects to preserve the unity and integrity of India.¹⁰

(B) Political and social issues:

Every religion has a core set of practices that must be followed; however, this is difficult because various religions have distinct religious faiths based on these fundamental practices. Furthermore, by seeking to carry out this agenda, the parliament's action would merely be viewed as a duplication of the Western form of legislation. The majority of people's ignorance of what UCC stands for, which is a problem in and of itself, is brought on by a number of things, such as a lack of information, the spread of false information, illogical religious beliefs, and so

⁷ Indian Penal Code, 1850, § 494, Acts of Parliament, 1850 (India).

⁸ INDIA CONST. art. 25

⁹ INDIA CONST. art. 26, cl.b.

¹⁰ Shabbeer Ahmed and Shabeer Ahmed, *Uniform Civil Code (Article 44 Of the Constitution) A Dead Letter*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE 545, 550 (2006), <https://www.jstor.org/stable/41856241>.

forth.

V. POSSIBLE SOLUTIONS TO THE UNIFORM CIVIL CODE CHALLENGES

You cannot overlook the issues outlined above. Because of this, the following options are available to address these issues and assist both supporters and detractors of the UCC in reaching a compromise.

To improve the laws governing marriage, adoption, maintenance, and divorce, among other things, the Indian Government and UCC opponents must work together. The government must take action to inform citizens about the value and necessity of UCC in modern society. By holding regular small-scale meetings at the district level, the government representatives must also take responsibility for helping the people who are connected to UCC to solve their concerns. Establishing a high-level committee is another excellent option to deal with the issue of UCC Bill implementation. This group will launch educational initiatives and pinpoint the root causes of the problem in collaboration with the Indian government.

VI. CONCLUSION

The drafters of the Indian Constitution felt that the time when the constitution was being drafted was not appropriate for the implementation of the UCC but they also felt that there would always be a need for it, so they included a provision under Part IV of the Indian Constitution which provides the Directive Principles of State Policy. This inclusion of the provision was precisely under, Article 44 of the Indian Constitution which confers that, "The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India"¹¹. Moreover, in general, the Directive Principles of State Policy are the directions to the Indian state to implement them in due course, except where there was a time frame of ten years mentioned¹². However, the tragedy is that Article 44 isn't being welcomed with open arms by a secular nation like India. With the non-implementation of Article 44 of the constitution, articles 14 to 18 are being violated which provides for the Right of equality and prohibition of discrimination on the grounds of sex and religion. Many personal laws relating to marriage, inheritance, guardianship, divorce, adoption, and property relations in all communities are unjust¹³.

As a result, India's debate over the Uniform Civil Code is ongoing and complicated. Although

¹¹ INDIA CONST. art. 44

¹² Leila Seth, *A Uniform Civil Code: towards gender justice*, 31 INDIA INTERNATIONAL CENTRE QUARTERLY, SPRING 40, 42 (2005), <https://www.jstor.org/stable/23005979>.

¹³ Shabbeer Ahmed and Shabeer Ahmed, *Uniform Civil Code (Article 44 Of the Constitution) A Dead Letter*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE 545, 549 (2006), <https://www.jstor.org/stable/41856241>.

it aims to promote equality and harmonize personal laws among religious communities, its implementation has encountered several difficulties. India's diverse social, cultural, and religious milieu makes the process even more challenging. The issue must be handled cautiously, with an appreciation of the importance of striking a balance between promoting equality and preserving cultural diversity. Any potential adoption of a UCC should involve extensive deliberation, agreement-building, and engagement with a wide range of stakeholders, including representatives from the legal and religious communities, as well as ordinary citizens and local leaders.
