

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Uniform Civil Code: A Study on the Individual Rights and the Role of Secular State

SAVITHRI¹ AND THANU VARSHINI²

ABSTRACT

This research project deals with the research about the problems arising on unavailability of a uniform civil code. All the people are governed by their personal laws with respect to marriage, succession, divorce etc. This research discusses the problems faced by people as a country diverse as India on the basis of the differential treatment of citizens, owing to their own personal laws, India which is a multireligious and multi lingual but divided on many facets, yet united by nationalist spirit.

The word "secular" in the Preamble refers to India's status as a secular nation in which no specific religion is supported or encouraged by the government. This indicates that individuals are free to practice and adhere to any religion they desire in India, as there is no official state religion. It also implies that no one can be subjected to religious discrimination by the government. The word "secular" was purposefully added to the Preamble in an effort to foster a society that is accepting of all religions.[1]

The idea of Sarva Dhrama Sambhava was a religious one, which clearly emphasize on treating people equally which means no religious inequality, but this idea has now turned as a major political concern. Religious views should be a matter of human choice in a nation like India, and no government should impose any particular set of religious doctrines or beliefs. All religious beliefs must be tolerated politically as long as they abstain from violence and acts against national interests. The phrase Sarva Dharma Sambhava conveys the sense of humanity, but it also teaches reverence for God's creatures and unity with everyone.[2]

Keywords: Personal laws, Article 14, Article 25, uniform civil code.

I. INTRODUCTION

The Uniform Civil Code is currently a widely discussed topic across the nation. Everyone who is capable of doing so is involved in this. This is a subject of recurring political debates. Organizations affiliated with Islam and Hinduism are debating this issue. While many Muslim

¹ Author is a student at SASTRA Deemed University, India.

² Author is a student at SASTRA Deemed University, India.

organizations are speaking out against UCC because they believe it will interfere with their traditions and beliefs, many Hindu organizations have backed it since it is anti-Islamic and will outlaw practices like polygamy and Nikah Halala.

Due to a general lack of awareness on this topic, only seldom discussions and debates are taking place on the real reasons "why UCC should be implemented." Thus, it becomes crucial to comprehend UCC, its legal implications, and its difficulties. Political propagandists are to blame for the awful comments that are being made about UCC.

In essence, a UCC entails consolidating all "personal laws" into a single body of secular legislation addressing these issues, which will be applicable to all Indian citizens regardless of the society to which they may belong. The specifics of this unified code are still being worked out, but it is expected to combine the most progressive and modern elements of all current personal laws with the most archaic ones.

According to one of the Constitution's "directive principles," "The State shall endeavour to secure for the citizens a UCC throughout the territory of India." The directive principles "shall not be enforceable by any court," as the Constitution expressly states. Article 44 imposes required obligations on the government, and it is its responsibility to implement its provisions. Every neighbourhood and segment of the country must abide by the provisions and directives of the Constitution, which was enacted for the entire nation. UCC refers to the concept of an expansive Indian Civil Law Code.

Every person is subject to the same set of secular civil laws under a UCC, regardless of where they live or their religious affiliation. This supersedes the rights of citizens to be subject to different personal laws based on their race or religion. There are codes like these in most modern countries. The idea behind UCC is unquestionably mostly a result of India's independence.[3]

However, they are "fundamental in the country's governance." This demonstrates that while our constitution itself stipulates that UCC should be applied in some way, doing so is not required. As a result, the argument over whether India needs a UCC is still ongoing.

II. MEANING OF UCC

Article 44 of the Indian Constitution states that the State "shall endeavour to secure for every one of its citizens a uniform civil code all over the India." This Article of the Constitution directs the State of India to draft and implement a uniform civil code for the whole country; it makes no reference to the Uniform Civil Code in any other article.

The term "Uniform Civil Code" (UCC) refers to a common set of laws governing all citizens of

the nation that seek to replace customs and personal laws based on the teachings of each major religion that are practiced by various communities throughout the nation. The code serves as a tool to carry out Article 44 of the Indian Constitution, which states that the state must work to establish a UCC in order to ensure that all Indian residents behave consistently and comply with the law across the country.[4]

When social interactions are not governed by uniform laws and behavioural guidelines, societies typically develop solid norms that eventually become antiquated and rigid. This explains why all legal systems, past, present, and future, have consistently emphasized uniformity of law as their ultimate goal (Summum Bonum, which sets the values and priorities in social and intercommunity relations in an ethical system).

The rules and conventions of social conduct offer a level of stability that acts as a restraint on the chaos and disorder that permeate society. There have definitely been multiple stages of social disorder, which has led to social unrest and taken the shape of laws that discriminate against specific groups in society. Indian society has demonstrated components of governance, like standardized social connection norms, as well as norms influenced by prejudice and bias.

India is a multicultural nation with a wide range of ethnicities and religions. Our legal system acknowledges this diversity as well, and the way that religion-specific personal laws are arranged reflects that as well.

III. JUDICIAL INTERPRETATION WITH RESPECT TO UCC

Part IV of the Indian Constitution, which strives to enhance the country's good administration, consists of eighteen articles (including those added by amendments) titled "Directive Principles of State Policy". Of all the mandates contained in the constitution, the one requiring everyone to follow the Uniform Civil Code has caused the greatest controversy.[4]

Currently, the state is required to carry out these. All national institutions should be guided by political justice. The qualities listed in Articles 37 to 51 of the Constitution describe the Directive Principles of State Policy.

Shayra Bano v. Union of India: The Supreme Court outlawed the *Talak-ul-Biddat* practice in a relatively recent ruling, merging six petitions related to the case. In terms of their fundamental human rights and the equality that the Indian Constitution guarantees, Muslim women have won. However, the ruling cannot be strictly interpreted in favor of UCC. The main justifications for disapproving the previously specified type of *talak* have been its non-obligatory and improper usage in light of the pertinent Islamic holy books. The bench did not solely consider

the question of a basic right being violated in violation of the constitution. There seems to be a negative reaction to the question of whether personal laws can violate a citizen's fundamental right. Each personal law provision needs to be carefully and explicitly reviewed in light of the pertinent religious scriptures **rather** than the Constitution in light of these court opinions.[5]

In the case of Sarla Mudgal (Smt.), and others v. Union of India and others¹⁷, Kuldeep Singh, J. held that "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Art. 44." He also directed the Government to implement the directive of Article 44 and to file an affidavit outlining the steps taken in the matter. As a result, the Supreme Court asked that the Government of India, acting through the Prime Minister of the Nation, review Article 44 of the Indian Constitution and work to ensure that every citizen of the country has access to a UCC. In addition, he recommended the formation of a committee to draft the Conversion of Religion Act. While concurring with Kuldip Singh, J., R.M. Shahai, J. also stated that "Ours is a Secular Democratic Republic." Our society is based on religious freedom. However, religious practices are oppression rather than autonomy since they violate human rights, dignity, and severely restrict fundamental civil and material freedoms.[6]

IV. LEGISLATIVE EFFORTS MADE ON THE PART OF UCC

Hindu code bill: This law was intended to establish a unified civil code, as desired by Jawaharlal Nehru, the country's first prime minister, as well as his female supporters. The Hindu bill itself drew greater criticism, with the primary points of contention being those pertaining to divorce, monogamy, the taking away of women's rights as coparcenaries, and inheritance to daughters.[7]

The Hindu Code Bill was unable to stop the pervasive prejudice against women. The laws pertaining to divorce granted equal rights to both parties; nonetheless, men are mostly responsible for initiating these regulations. Given that the Act exclusively covered Hindus, women the other communities continued to be subjugated.

The Special Marriage Act of 1954 permits Indian citizens to marry nonreligious persons in a civil ceremony, irrespective of their religious beliefs. Jammu & Kashmir was exempt from the law, while the rest of India was. In many aspects, the statute was almost exact replica of the Hindu Marriage statute of 1955.[8]

Under the Special Marriage Act, Muslims could marry and maintain the privileges that were not included in personal law but were typically beneficial to Muslim women. This act forbade polygamy and established the Indian Succession Act as the successor statute, superseding the pertinent Muslim Personal Law.

V. MISCONCEPTIONS OF UCC

In an attempt to debunk misconceptions about the Uniform Civil Code, the researcher is approaching the subject from an academic perspective in an effort to expose ignorance that may have been displayed intentionally or inadvertently.

"The state shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India," reads Article 44 of the Indian Constitution.

Myth: The right to freedom of religion will be violated by the implementation of UCC.

Fact: The right to freedom of religion is not violated by the application of a Uniform Civil Code (UCC). The Indian Constitution's protection of the right to freedom of religion allows people to freely practice and spread their faith. To safeguard the rights and interests of all people, this right is not unqualified and may be subject to appropriate limitations.

Myth: Attending UCC will transform your customs and social standing

Factual information: Regardless of a person's religion or community, a UCC would regulate all private affairs, including marriage, divorce, inheritance, and adoption. It doesn't aim to change or have any impact over a person's unique religious beliefs, practices, or rituals. The Indian Constitution guarantees essential rights, including the freedom of religion and the ability to practice one's faith, which are unaffected by the establishment of a UCC.

Myth: UCC will force majority laws on everyone and be unjust to minority populations.

Fact: The cultural and religious sensitivities of every community would be taken into account in a well-drafted UCC. It would give everyone a shared framework for settling personal disputes in a fair and just manner rather than forcing everyone to abide by a single set of laws biased toward a certain faith.

Myth: India's cultural diversity will be undermined by UCC

Fact: The goal of enacting a UCC is to preserve and honor the many cultural practices and customs of various communities while codifying existing personal rules into a set of codified laws. The adoption of a UCC does not aim to undermine India's cherished characteristic of "Unity in Diversity," which is a well-known feature of Indian society. Because of India's rich cultural legacy, the UCC strives to strike a balance between maintaining uniformity in legal principles and preserving cultural variety.

Myth: UCC opposes the Indian Constitution

Fact: Dr. B.R. Ambedkar, one of our nation's founding fathers, said during the Constitution's

formulation that while a UCC was desirable, it should remain optional until the country was socially ready to embrace it. The Indian Constitution specifies in Article 44 that “the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” While the Contract Act, the Transfer of Property Act, and the Civil Procedure Code are examples of uniform statutes that apply to all Indian citizens, the Uniform Civil Code that is being discussed here specifically refers to personal laws governing marriage, divorce, inheritance, and adoption. Its goal is to create consistency in these particular domains.[9]

VI. CONCLUSION

The term "secular" is used in the preamble of the Constitution, which also states that as the state is secular, it is not allowed to meddle in matters pertaining to an individual's religion.[10]

However, since religion is a matter of personal faith that cannot be combined with secular activities and can be regulated by the State through the enactment of laws, as the Supreme Court has already held in the case of *S.R. Bommai v. Union of India*, we can state that individual rights have no bearing on India's unity and integrity. We can sum up by arguing that the UCC equates to equal laws for all societal groups. [11]

India's population must be regulated under a single body of laws. UCC is required for secularism and national unity. Because our society does not meet the requirements to use the "UCC," UCC is still pending. Why is that the case given that the Investigator noted India is a country that is multireligious. There are many different cultures, and these cultures, as well as the tendencies and behaviours of their individuals, are incredibly diverse. Even so, we say India provides Unity in Diversity, but not in every way; otherwise, UCC could have been implemented much earlier.[12]

VII. REFERENCES

- 1) Edumound (2020) *Sarva Dharma Sambhava : A unique concept*, EduMound. Available at: <https://edumound.com/article/sarva-dharma-sambhava/> (Accessed: 09 December 2023).
- 2) Debroy, B. (2023) *Opinion: Why India needs a uniform civil code*, NDTV.com. Available at: <http://www.ndtv.com/opinion/why-india-needs-a-uniform-civil-code-4161333/> (Accessed: 09 December 2023).
- 3) INDIA CONSTI. Art. 5.
- 4) Writer, S. (2023) *Uniform civil code explainer: What is UCC? what does constitution say about it*, mint. Available at: <https://www.livemint.com/news/india/uniform-civil-code-explainer-ucc-indian-constitution-directive-principles-hindu-marriage-act-muslim-personal-law-11687924522068.html> (Accessed: 09 December 2023).
- 5) Suman, S. (2023) *Shayara Bano vs. Union of India [(2017) 9 SCC 1]*, LawBhoomi. Available at: <https://lawbhoomi.com/shayara-bano-vs-union-of-india-2017-9-scc-1/> (Accessed: 09 December 2023).
- 6) 1995 AIR 1531
- 7) Banningan, John A. "The Hindu Code Bill." *Far Eastern Survey*, vol. 21, no. 17, 1952, pp. 173–76. *JSTOR*, <https://doi.org/10.2307/3024109>. Accessed 9 Dec. 2023.
- 8) THE SPECIAL MARRIAGE ACT, 1954
- 9) *Busting myths around Uniform Civil Code (UCC)* (no date) *Finology Blog - Latest Updates & News on Current Affairs and Laws in India*. Available at: <https://blog.finology.in/Legal-news/ucc-myths-truths> (Accessed: 09 December 2023).
- 10) Standard, B. (2023) '*socialist, secular*' in the preamble to Constitution: All you need to know, *Business Standard*. Available at: https://www.business-standard.com/india-news/socialist-secular-in-the-preamble-to-constitution-all-you-need-to-know-123092000288_1.html (Accessed: 09 December 2023).
- 11) S.R. Bommai vs Union Of India, 1994 AIR 1918
- 12) Lekhi, A. (2023) *Uniform civil code: Clash of moral universalism and cultural pluralism*, *Frontline*. Available at: <https://frontline.thehindu.com/the-nation/uniform-civil-code-clash-of-moral-universalism-and-cultural-pluralism/article67105045.ece> (Accessed: 09 December 2023).
