

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

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Uniform Civil Code: An Analysis

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ABSTRACT

The term "Uniform Civil Code" alludes to a collection of universal, secular laws that will apply to all Indian citizens without regard to their caste, language, or tribe. India has a single code for laws pertaining to contracts, property transfers, criminal laws, and other civil laws that are unreligious. Laws relating to marriage, divorce, inheritance, and the acquisition and administration of property are among the other areas of law that will be covered by it. The state is required by DPSP article 44 to create a uniform civil code. The issues raised during the discussion of the Uniform Civil Code led to the creation of this study report. The analysis focuses on the grassroots communities' current situation in relation to the pressing demand of the moment. The idea of a single civil code is questioned in this essay, as well as its viability for the majority of Indians. The UCC of Goa is used in this research to analyse the difficulties of such a code and to suggest alternatives to the idealistic goal of a single code.

Keywords: *Uniform Civil Code, DPSP, Secular Law, Single code.*

I. INTRODUCTION

India is home to several cultures and ethnic groups, all of which have distinctive physical characteristics, languages, religions, and cultural practises. Since India is a secular country without an official religion, every resident has the freedom to practise whichever religion they choose. Everyone has the right to practise their own religion, as religion is a personal concern. Article 25 guarantees the fundamental right to "freedom of religion."³ and The Constitution's Article 26 guarantees "freedom to manage religious affairs."⁴ Both Article 25 and 26 are subject to public order, morality and health⁵. Gender parity is frequently perceived as being impeded by religion. Gender-based violence committed in the name of religion is a common topic of stories. Because of this, the problems with gender parity and religion are frequently written off as being too complex to handle.⁶ Additionally, personal laws in India cover issues such as joint families, divorce, support, guardianship, and succession. These can generally be referred to as

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³ INDIA CONST. art. 25.

⁴ INDIA CONST. art. 26.

⁵ INDIA CONST. art. 25 & 26.

⁶ WORLD ECONOMIC FORUM, <https://www.weforum.org/agenda/2015/11/religion-holds-women-back-or-does-it/> (last visited Apr.25, 2023).

"family laws." India is a secular nation in all other respects, yet it is essentially pluralistic when it comes to its personal laws. Therefore, notwithstanding the Indian Constitution's provisions of equality before the law and equal protection under the law, the country's personal laws treat people differently since they are implemented according to each person's religion.⁷ Personal laws in India provide a threat to fundamental rights while also being important for access to the legal system, frequently resulting in injustice. Particularly in situations where one minority's right is pitted against another, further erasing, for example, women's rights. All personal laws have a justification to exist, yet they also violate the fundamental rights of non-masculine individuals.

The adoption of a standard civil code is required to address all of these issues. According to the Uniform Civil Code (UCC), all religious communities in India would be subject to one legislation that would govern issues including marriage, divorce, inheritance, and adoption. The Constitution's Article 44 governs the code.⁸ Article 44 contained in part IV of the Constitution says that the state "shall endeavour to secure for the citizens a uniform civil code throughout the territory of India"⁹. The authors of the Constitution intended the UCC to be a consistent body of laws that would replace the unique personal laws of each faith with regard to issues like marriage, divorce, adoption, and inheritance, even if there isn't yet a draught or model document for it. The Directive Principles of State Policy are set forth in Part IV of the Constitution, and even while they cannot be enforced or litigated in a court of law, they are essential to the nation's government.¹⁰ It is desirable that the Uniform Civil Code should neither be a Hindu code nor a Muslim one. It should be a positive, secular and composite code, subscribing to the universal principles of equality, non-discrimination and human dignity. An ideal UCC should include monogamy, equal rights for son and daughter over the inheritance of parental property, and gender and religious neutrality in matters of marriage, divorce, adoption, succession, will and charity.

II. WHAT IS UNIFORM CIVIL CODE: A BRIEF HISTORY

The Uniform Civil Code, or UCC, is a proposed law in India that would establish and carry out individual citizen rules that would be applicable to everyone, regardless of gender, sexual orientation, or religion. Currently, the personal laws of many communities are governed by their respective religious texts. The British government's report from 1835, which emphasised the

⁷ *The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

⁸ INDIA CONST. art. 44.

⁹ *ibid*

¹⁰ Dr. J.N. Pandey, *Constitutional Law of India* 496- 500 (Central Law Agency 2020).

need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts and specifically recommended that personal laws of Hindus and Muslims be kept outside of such codification, is where the UCC first emerged.¹¹ The government created the B N Rau Committee to codify Hindu law in 1941 as a result of an increase in laws addressing personal matters at the end of British rule. The Hindu Law Committee's task was to investigate whether common Hindu laws were necessary. The committee proposed a codified Hindu law that would grant women equal rights in accordance with the scriptures. The 1937 Act was examined, and the committee suggested that Hindus have their own civil code for marriage and succession.¹² Currently, the religious texts of different communities regulate their personal laws. Personal laws govern marriage, divorce, inheritance, adoption, and maintenance. They are distinct from public laws.

Articles 25 to 28 of the Constitution guarantee religious organisations as well as individuals the freedom to practise their religion. It anticipates that when developing national policies, the State will adhere to common law and directive principles¹³. The earliest personal laws, primarily for Muslims and Hindus, were created during the Raj. The British chose not to continue meddling in this area, however, due to concerns from local leaders. Bills that extensively codified and reformatted personal laws for Buddhists, Hindus, Jains, and Sikhs were introduced after Independence. However, they excluded Parsis, Christians, and Muslims.¹⁴

III. UNIFORM CIVIL CODE AND PERSONAL LAWS

An initiative known as the Uniform Civil Code would create and uphold a set of civil laws that would be equally applicable to all individuals, regardless of their religion. This would imply that everyone, regardless of their religious convictions, would be bound by a single civil code that dealt with issues like marriage, divorce, support, inheritance, adoption, and the transfer of property, among other things. A uniform set of laws that apply to all residents is what the Uniform Civil Code (UCC) aims to do in place of the current laws that only apply to particular communities. Currently, there are discrepancies between the laws that apply to various communities, including The Parsi Marriage And Divorce Act¹⁵, The Hindu Marriage Act¹⁶, The

¹¹ ADDA, <https://currentaffairs.adda247.com/what-is-uniform-civil-code-in-india/> (last visited Apr.25, 2023).

¹² BUSINESS STANDARD, <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited Apr.25, 2023).

¹³ INDIA CONST. art. 25 to 28

¹⁴ THE FEDERAL, <https://thefederal.com/explainers-2/a-brief-history-of-uniform-civil-code-and-why-the-idea-wouldnt-go-away/> (last visited Apr.26, 2023).

¹⁵ The Parsi Marriage and Divorce Act, 1936, No. 3, Act of Parliament, 1936 (India).

¹⁶ The Hindu Marriage Act, 1955, No. 25, Act of Parliament, 1955 (India).

Hindu Succession Act¹⁷, The Indian Christian Marriages Act¹⁸, And The Indian Divorce Act¹⁹. In addition, not all laws have been codified, including Sharia, which is governed primarily by religious texts. The UCC aims to correct these inconsistencies and give all citizens access to a consistent legal system.

The majority of current personal laws are founded on the aristocratic, patriarchal ideas of society found in all religions. As patriarchal orthodox people continue to believe that the reforms in personal laws will ruin their sanctity and vigorously resist them, disgruntled women typically make the demand for UCC as a replacement for existing personal laws.

IV. CONSTITUTION PROVISIONS ON UNIFORM CIVIL CODE

The dispute about the Uniform Civil Code is not new; it has existed since since the Constitution's authors discussed it. As the Chairman of the Drafting Committee, Dr. B.R Ambedkar²⁰—often referred to as the "Father of the Constitution"—was unmistakably in favour of the Uniform Civil Code during the discussions in the Constituent Assembly. "State shall endeavour to provide for its citizens a Uniform Civil Code (UCC) throughout the territory of India," reads Article 44 of the Constitution of India, 1950²¹. A Uniform Civil Code seeks to replace the various faith communities' individual laws with a uniform set of laws that apply to all citizens of the nation. This concept has received a range of responses up until now. The Muslim community appears to harbour strong misgivings about the UCC.

There was disagreement in the Constituent Assembly on whether to include a chapter on fundamental rights for the Uniform Civil Code. A vote was taken to decide the issue. By a vote of 5:4, the basic rights subcommittee led by Sardar Vallabhbhai Patel determined that the clause was beyond the purview of fundamental rights and that, as a result, the freedom of religion should take precedence over the Uniform Civil Code.²² The Indian Constitution's Preamble makes the decision to establish a "Secular" Democratic Republic. This implies that there is no official state religion, or that the government does not follow any particular religion and is not allowed to discriminate on the basis of religion. Freedom of religion and freedom to conduct religious affairs are guaranteed by Articles 25 and 26 of the Indian Constitution,²³ which are enforceable basic rights. The state must make efforts to ensure that India has a consistent civil

¹⁷ The Hindu Succession Act 1956, No. 30, Act of Parliament, 1956 (India).

¹⁸ The Indian Christian Marriages Act, 1872, No. 15, Act of Parliament, 1972 (India).

¹⁹ The Indian Divorce Act, 1869, No. 4, Act of Parliament, 1969 (India).

²⁰ Dr. J.N. Pandey, *Constitutional Law of India* 16 (Central Law Agency 2020).

²¹ INDIA CONST. art. 44.

²² THE LEAFLET, <https://theleaflet.in/what-did-the-constituent-assembly-say-on-the-uniform-civil-code/> (last visited Apr.26, 2023).

²³ INDIA CONST. art. 25 & 26.

code, according to Article 44 of the Constitution, which is not enforceable in a court of law.²⁴

V. SPECIAL MARRIAGE ACT, 1954 AND UCC

The Indian citizens were promised by the constitution's authors that UCC would be enacted, and they will now endeavour to keep their word. But even decades after gaining independence, India's legislators were unable to put the Uniform Civil Code into effect. However, they did succeed in putting into effect The Special Marriage Act (SMA)²⁵, which was passed by the Indian parliament in 1954 and contains the core provisions of UCC. The act legalises weddings between people of different religions and faiths who are either Indian citizens or Indian nationals who reside abroad. There was a great deal of uproar and discontent when this act was passed, especially among the minority population. India, a country with a wide range of cultural and religious traditions, perceived this conduct as a challenge to their very faith and feared losing the authenticity of their culture. The act's passage was crucial in preventing people from converting their religion solely for marriage and other types of concerns.²⁶

The Special Marriage Act, 1954²⁷ (hereinafter referred to as “The Act”) is a significant milestone in the secularization of the personal laws in India.²⁸ The Act guarantees a common or uniform marriage to every Indian citizen, irrespective of their caste or religion. This makes it possible for any Indian citizen to get married outside the purview of a specific, restrictive religious law. When introducing the Bill to the Lok Sabha, C.C. Biswas stated that the goal of the bill was to establish a uniform national law of marriage for all regions of the country.²⁹ When making a plea in a habeas corpus, the honourable Allahabad High Court stated that it is puzzling to change one's religion solely for the sake of marriage. “However, according to the Constitution, a citizen has the right to declare, practise, or engender the religion of his or her choice to others only for marriage, and nothing else. Beliefs are different from marriage in many ways. If two people of different religions decide to get married, they can do so under the special marriage legislation.”³⁰

²⁴ INDIA CONST. art. 44.

²⁵ The Special Marriage Act, 1954, No. 43, Act of Parliament, 1954 (India).

²⁶ JUSCORPUS, <https://www.juscorpus.com/analyzing-the-special-marriage-act-and-uniform-civil-code/> (last visited Apr.26, 2023).

²⁷ The Special Marriage Act, 1954, No. 43, Act of Parliament, 1954 (India).

²⁸ “The Special Marriage Act, 1954 Goes Awry” by B. Sivaramayya, <https://www.scribd.com/document/487963645/The-Special-Marriage-Act-1954-Goes-Awry-310-318#>

²⁹ Zoya Khan @ Smt. Rinki Ganesh Kashaul @ Pinki Kashaul v. State of UP, HABEAS CORPUS No. – 22388 of 2018.

³⁰ D.M. Derrett, Religion, Law and the State in India 28-327 (OUP India 1999).

VI. UNIFORM CIVIL CODE IN GOA

The only state in India that has a uniform civil code applies to everyone, regardless of caste, gender, or religion is Goa. Everyone adheres to the same divorce, marriage, and succession laws, regardless of whether they are Hindu, Muslim, or Christian. There is a common family law system in place, therefore everyone is subject to the same rules. Parliament permitted The Portuguese Civil Code, 1867,³¹ to be applied to Goa when it became a Union Territory in 1961. This law is amendable and revocable by the appropriate legislature. A marriage in Goa is a legally binding agreement between two individuals of opposite sexes for the purpose of establishing a legitimate family and is recorded with a civil registrar. Before starting their married life, the parties must abide by the rules and restrictions. However, there are some groups of people who cannot get married, such as any spouse who has been found guilty of murdering their spouse or helping to facilitate that crime.³² According to the Goan Code, marriage registration is required in order for any ensuing legal challenges to be settled. Prior to marriage, both men and women must give their consent. The Goan code permits prenuptial agreements, which can change how assets are distributed.³³

VII. IMPLEMENTATION OF UNIFORM CIVIL CODE

There is currently no universal family law in a single statute book for all Indians that is acceptable to all religious communities in India within the existing legal system. To that end, the Uniform Civil Code (UCC) was created. It alludes to a common civil law that unifies numerous intricate family law regulations under a unified framework. The constitutional phrase "We the People of India" incorporates a national plurality of Indians that transcends race, religion, and caste as part of its dynamic unity. All of its citizens must look for a workable solution that prioritises peace and tolerant religious diversity while striking a balance between the right to religion and the right to justice. The UCC reaffirmed its dedication to the fundamental concept of legal equality for all communities. The foundation that counts is justice. In the Indian Constitution's Directive Principles, Article 44³⁴ defines the Uniform Civil Code. Although the Directive Principles are explicitly stated in Article 37³⁵ of the Constitution to "shall not be enforceable by any court," they are nonetheless "fundamental in the governance of the country." The purposeful navigation for the necessary positive change a for a better future

³¹ The Portuguese Civil Code, 1867, Charter of Law 1st of July 1867.

³² DAILY PIONEER, <https://www.dailypioneer.com/2022/columnists/the-uniform-civil-code-novelty-in-go.html> (last visited Apr.26, 2023).

³³ IPLEADERS, <https://blog.ipleaders.in/uniform-civil-code-go-a-case-study/> (last visited Apr.26, 2023).

³⁴ INDIA CONST. art. 44.

³⁵ INDIA CONST. art. 37.

is a demanding undertaking in post-modern India. The Apex Court has issued numerous directives for its implementation over the years. The goal of this law is to guarantee that all human relationships and needs are non-differentiated in addition to bringing a maze of disparate laws that govern and regulate topics on areas of a private sphere or family law such as marriage, divorce, maintenance, succession, minority, and guardianship, etc. under one umbrella.

In, *Balwant Raj v. Union of India*³⁶, Justice Dhawan stated- “The rights revered in the order standards are not justiciable however, these standards have been made ” crucial in the administration of the country” under Article 37 which gives that it will be the obligation of the state to apply them in making laws. The expressions ” making of laws” is adequately wide to incorporate their understanding and consequently the courts should decipher the laws in the light of the Directive Principles.”

VIII. CHALLENGES IN IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA

The UCC must be implemented in a democratic, secular nation like India in order to safeguard vulnerable populations including women, children, and religious minorities. UCC is desirable in order to promote nationalistic passion through fostering unity. However, in a pluralist culture like India, where individuals trust their religious ideas and beliefs, it is challenging to adopt UCC. The fundamental reason the UCC could not be put into practise in India even after independence was that the framers of the Indian Constitution likewise had significant issues trying to unify the religion. Many communities, especially minority ones, believe that the Uniform Civil Code infringes upon their ability to practise their religion freely. They worry that a single code will disregard local customs and impose laws heavily influenced and imposed by the majority of religious communities. The right to practise any religion is guaranteed under the constitution. The extent of the right to freedom of religion will be constrained by the codification of uniform regulations and their imposition.³⁷

The Uniform Civil Code is "neither necessary nor attractive at this stage" in the nation, according to a 2018 Law Commission of India assessment, and secularism cannot reject the country's diversity. The integrity and unity of the society may be threatened by the Uniform Civil Code in a country like India, which has such a sizable diversified society.³⁸ Goa, however, is a case where UCC was used without sacrificing universality.³⁹ The Supreme Court

³⁶ *Balwant Raj v. Union of India*, AIR (1968) All 14.

³⁷ THE LEGALLOCK, <https://thegallock.com/uniform-civil-code-advantages-challenges-and-debate>(last visited Apr.26, 2023).

³⁸ Law Commission of India, 71st Report on Reform of Family Law, (August 2018).

³⁹ The Portuguese Civil Code, 1867.

acknowledged this as well, referring to the UT as a "shining example of UCC."

IX. JUDICIARY ON UNIFORM CIVIL CODE

*S R Bomai v. Union of India*⁴⁰, In the case, Justice Jag Jeevan Reddy ruled that while religion is a matter of personal faith and belief and cannot be incorporated into secular activities, it can be controlled by the State by passing legislation..

Mohammad Ahmed Khan v. Shah Bano Begum,⁴¹ popularly known as Shah Bano case, involved Shah Bano's appeal to the Supreme Court in 1985 to seek maintenance under section 125 of the Code of Criminal Procedure. Her husband had divorced her after 40 years of marriage by giving triple talaq and denied her regular maintenance. The Supreme Court ruled in Shah Bano's favor, applying section 125 of the Indian Criminal Code, which is applicable to all citizens regardless of their religion. Then Chief Justice, Y.V Chandrachud, observed that a Common Civil Code would help the cause of national integration by removing disparate loyalties to law. The court also directed Parliament to frame a UCC.

The Supreme Court has once again directed the government on Article 44, in the case of *Sarla Mudgal v. Union of India*⁴². The main issue in this case was whether a Hindu husband who had been wed according to Hindu law may get married again by becoming a Islam. The court came to the conclusion that such a conversion for remarriage constituted an abuse of personal laws. The previous Hindu marriage was not dissolved by the conversion to Islam, although it can be a reason for divorce. The husband who converted would be liable to the requirements of Section 494 of The Indian Penal Code⁴³, and the second marriage would be regarded as null and void. The court also emphasised how important it is for India to adopt a Uniform Civil Code, which would guarantee that personal laws are upheld. The Indian government was consequently required to submit an affidavit outlining its efforts to create a UCC for its citizens.

John Vallamattom v. Union of India ⁴⁴In 1997, The Indian Succession Act's Section 118, according to a writ petition filed by a priest from Kerala by the name of John Vallamatton, unlawfully discriminates against Christians by imposing arbitrary limitations on their capacity to leave property to charity or for religious use in their wills. The clause was declared illegal and overturned by the panel, which was made up of Chief Justice of India V.V. Khare, Justice S.B. Sinha, and Justice A.R. Lakshmanan. The court stated: "Article ⁴⁵44 states that the State

⁴⁰ *S R Bomai v. Union of India*, AIR 1994 SC 1918.

⁴¹ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

⁴² *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

⁴³ The Indian Penal Code, 1860, Sec.494, No. 45, Act of Parliament, 1860 (India).

⁴⁴ *John Vallamattom v. Union of India*, AIR 2003 SC 2902.

⁴⁵ INDIA CONST. art. 44.

shall work to ensure that all citizens have access to a Uniform Civil Code throughout India's territory. We lament greatly that Article 44 of the Constitution has not been put into practise. For the purpose of drafting a uniform civil code for the nation, the Parliament has yet to act. By resolving ideological inconsistencies, a common civil code will advance the cause of national integration”.

X. CONCLUSION

A nation's civil code must be consistent in order for it to serve both the interests of justice and the needs of its diverse population. In India, you have the same freedom to practise your religion as you do with other rights like the right to equality and the prohibition of discrimination. India has chosen to accommodate these many groups of people by allowing them to maintain their religious practises through the use of personal laws, which on the other hand leads to inequity. The UCC attempts to safeguard vulnerable groups, including as women and religious minorities, as envisioned by Ambedkar, while simultaneously fostering nationalistic ardour via unity. When put into effect, the code will aim to make laws that are currently divided based on religious views, such as the Hindu code bill, Sharia law, and others, simpler. The code will make the complicated regulations governing marriage ceremonies, succession, inheritance, and adoptions simpler and more universal. All citizens will then be subject to the same civil law, regardless of their religious affiliation.

Due to the fact that all civil laws, with the exception of personal laws, are the same for everyone in India, all citizens are already treated equally before the law. The Uniform Civil Code will ensure that all citizens are subject to the same set of personal laws. Issues of discrimination, concessions, or special benefits enjoyed by a specific community due to their unique religion personal laws won't be subject to any political polarisation. It is crucial that the populace realises and comprehends that law and religion are two entirely separate fields that should not be merged. UCC aims to bring people together and end discrimination, not to threaten minority. This would assist not only the inhabitants but also the entire country in developing and becoming a progressive one.
