

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

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: Implementation and Challenges

AKANKSHA TIWARI¹

ABSTRACT

Uniform Civil Code popularly known as 'One Nation – One Law' is defined in Article 44 of the Indian Constitution. It is the duty of the State to secure Uniform Civil Code for the citizens throughout the country. The Uniform Civil Code in India aim to safeguard vulnerable communities, including women and religious minorities, as envisioned by Ambedkar, while simultaneously fostering nationalistic fervor via unity. The main objective behind the UCC is to replace the different personal laws with a common set of rules governing every citizen. Personal Laws are distinguished from Public Law and it basically covers marriage, divorce, inheritance, adoption and maintenance. There is mainly three contextual issues related to Uniform Civil Code in modern India i.e., legitimacy, gender equality and majority v. minority. One of the main raised by opponents of the UCC is the potential impact on minority communities. Personal laws are deeply linked with the religious identity and practices of these communities. They argue that imposing a common civil code may dilute the unique rights protections enjoyed by minority groups and erode their cultural autonomy. Protecting minority rights and preserving their distinct practices is considered crucial in a pluralistic society like India.

Keywords: *Personal law, Article 44, Minority, Religion, Common Civil Code.*

I. INTRODUCTION

The existence of a diverse range of cultures, linguistic diversity, various ethnic groups, numerous religions or religious wings, communities, and so on are fundamental aspects of India as a nation. All of these groups and communities have their own distinct and distinct identities, and their coexistence makes India genuinely wonderful in a variety of ways. India's heart and soul are found in its religio-cultural variety, which has been a feature of India's identity in the past, present, and future. India has been the home of every religion in the world, and no religion is foreign to India. The world has known great religious people from India, and India has also accepted the two major religions, Christianity and Islam, which developed one after the other in recent history, with open arms. Both religions have been practised for roughly 2000 years, making them a vital part of India's religio-cultural traditions. In fact, India is the only country

¹ Author is an Assistant Professor at Shri Ramswaroop Memorial University, Lucknow, India.

in the world that can claim to be the home of all four major religions. Other religions practised by the people of India include Sikh, Jain, and Jewish believers. Religious tolerance and principles have had and will continue to have a huge impact on India's culturally heterogeneous and religiously varied society.

II. HISTORY OF UNIFORM CIVIL CODE

- The British government's 1835 report on colonial India, which emphasized the need for uniformity in the codification of Indian law with regard to crimes, evidence, and contracts and specifically suggested that personal laws of Hindus and Muslims be kept outside of such codification, is where the Uniform Civil Code (UCC) first emerged.
- The government was forced to create the **B N Rau Committee in 1941 to codify Hindu law** due to an increase in legislation addressing personal concerns at the end of British rule. Examining the issue of whether common Hindu laws are necessary was the Hindu Law Committee's responsibility.
- According to the committee's recommendation, which was based on the scriptures, women would have equal rights under a codified version of Hindu law. The 1937 Act was reviewed, and the committee suggested establishing a civil code for Hindu marriage and succession.²

III. CONSTITUTION AND UNIFORM CIVIL CODE

Our Constitution provides several strong safeguards in Part III to protect individual rights granted to all citizens of the country regardless of caste, creed, ethnicity, sex, place of birth, or religion. This prohibits the state from enacting any law that could lead to discrimination on the basis of any of the aforementioned grounds. The giving of equal respect by the state to all religions is arranged as a basic aspect of Secularism in India. This has also liberated every religion by allowing them to create their own personal laws that are not subject to court scrutiny. Though, at first, the introduction of fundamental freedoms and rights into our Constitution appeared to be acceptable and reasonable, particularly in the religious realm. Articles 25-28 of our Constitution enshrine this value, which guarantees religious freedom to all citizens. This paved the path for the inclusion of personal laws based on religion and culture. However, under the cover of religious freedom, personal laws in India have been in persistent conflict with other fundamental rights enshrined in Articles 14-15 and 21 of the Constitution. Almost all personal

²Current affairs adda247 <https://currentaffairs.adda247.com/what-is-uniform-civil-code-in-india/> (last visited on 01 august 2023)

laws plainly demonstrate discriminatory practises towards other cultures and fundamental rights in some form. If we examine Articles 14, 15, and 21 of our Constitution, we will discover that they serve as a watchdog against any inequality, inhuman treatment, discrimination, and violation of our other fundamental rights on any basis. However, based on practical examples, we have proven ourselves to be failures, as nothing suitable has yet been accomplished in this area. Part IV, Article 44 of the Indian Constitution states, "The State shall endeavour to secure to the citizen a UCC throughout the territory of India." ³However, it is also stated in Article 37 of the Constitution that the DPSP "shall not be enforceable by any court." ⁴However, the Constitution makes it plain that DPSP are critical to the country's governance.

IV. STATUS OF PERSONAL LAWS IN INDIA

India is the land to a variety of customs and communities and this can be evident by the presence of numerous famous cultures and religions, found across the globe, in India. The law and customs have ensured the prevalence of religious diversity and establishment of inter-community tolerance in the country. India is a country where the principle of Secularism has been enshrined in the Constitution itself yet there exists a contradiction in the whole practice of secularism, especially when the concept of secularism is interpreted particularly in comparison to the personal laws of different religious communities.

It has become a complex arrangement in the society that Hindus, Muslims, Parsees and Christians are carrying their different personal laws governing civil matters such as marriage, divorce, adoption, inheritance of property, succession and maintenance etc. This may be varying in case of other such issues but in matters of marriage and divorce, almost every religious community in India follows their own set of personal laws. People of all the religious communities in India co-exist as people of one nation yet the laws governing their civil and family matters are different from each another. Therefore, the directions of social conduct under that particular religion they follow blindly, doesn't matter how outdated and discriminatory they are. Some of the popular codified personal laws governing matters like marriage, divorce, inheritance and maintenance are listed below:

- The Indian Christian Marriage Act of 1872 (applicable throughout India except erstwhile Travancore- Cochin, Manipur and Jammu & Kashmir regions);
- To govern Sikh marriages, the Anand Marriage Act, 1909 ;

³ Constitution of India.

⁴ Ibid

- Muslim Personal Law (Shariat) Application Act, 1937 (Application of Shariat laws to Indian Muslims);
- Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-Cochin region);
- Hindu Marriage Act, 1955 (applicable on Hindus, Buddhists and Jains and also to any person other than a Muslim, Christian, Parsi or Jew, and who is not governed by any other law)⁵; and
- The Parsi Marriage and Divorce Act, 1937

It is provided by the Article 13(1) of the Constitution of India that “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, ⁶shall, to the extent of such inconsistency, be void.” In the case of the **State of Bombay v. Narasu Appa Mali**,⁷ a question of immense importance was raised before the court that- “if at all, any Personal Law or any of its provision violates, any of the Fundamental Rights guaranteed in Part III of the Constitution of India, whether such Personal Law or its provision, to the extent of such inconsistency, is void”.

Article 44 is an important evidence of the fact that the Constitution recognizes and maintains the separate existence of the personal laws. It says that “**The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.**” Apart from these implications there are direct evidences which make it clear that, the Indian policy recognizes and maintains separate existence of the personal laws. For instance, with regard to Article 5(a)⁸and 16(1)⁹ of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the government of India declares that “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.”¹⁰ Kuldip Singh, J., in Sarala Mudgal requested the Government of India through the Prime Minister of India to have a fresh look at Article 44

⁵ AIR 1952 Bom 84

⁶ That is, Part III, dealing with the Fundamental Rights.

⁷ Ibid (4)

⁸ Article 5(a) of the CEDAW states that- State Parties shall take all appropriate measures to modify the social and cultural patterns of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority and superiority of either of the sexes...

⁹ Article 16 of the CEDAW deals with the issue of marriage and family relations. It asserts equal rights and obligations of men and women with regard to choice of spouse, parenthood, personal rights and command over property.

¹⁰ See, “Baseline Report on Rights of Women in Relation to Marriage in India”, prepared by Association for Advocacy and Legal Initiatives (AALI) and coordinated by International Women’s Right Action Watch (IWRAW) Asia Pacific, Kuala Lumpur, Malaysia, (Advanced Unedited Version), at p 3.

and “endeavour to secure for the citizens a uniform civil code throughout the territory of India” and further directed the Government of India through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in the Supreme Court indicating therein the steps taken and efforts made, by the Government of India, towards securing a “uniform civil code” for the citizens of India. Consequently, on behalf of the Government of India, it has been reiterated that, “the Government would take steps to make a uniform civil code only if the communities which desire such a Code approach the Government and take the initiative themselves in the matter.”¹¹

Therefore, **Chagla, C.J. and Gajendragadkar, J., in Narasu Appa Mali**, ruled that the personal laws are not ‘laws in force’ and hence they are not void even when they come into conflict with the Fundamental Rights.¹²The view taken in Narasu Appa’s case has been confirmed by various High Courts¹³ and the Supreme Court¹⁴ though not agreed upon by several authorities.¹⁵

V. RECENTLY WHY UNIFORM CIVIL CODE IS IN NEWS?

On June 14, 2023 the 22nd Law Commission of India, headed by Ritu Raj Awasthi, a former chief justice of the Karnataka High Court, issued a notification eliciting the opinions of various stakeholders, including public and religious organisations, on a Uniform Civil Code of the nation. The notification came as a surprise as only five years ago, the 21st Law had concluded that a UCC was “neither necessary nor desirable at this stage” for the country.

(A) Conflict between Personal Law and Part III of the Constitution

Two scenarios arise which are to be discussed to determine the conflicts:-

a) Personal laws , codified, customary in practice coming in conflict with the provisions of Part-III of the Indian constitution .

¹¹ *Lily Thomas, etc. etc. v. Union of India and others*, AIR 2000 SC 1650, Para 42, p 1661.

¹² Concept of personal law in British India, Para 4.1.3.1, above, at p.112.

¹³ *Srinivasa Aiyer v. Saraswati Ammal*, AIR 1952 Mad 192; *Ram Prasad v. State of Uttar Pradesh*, AIR 1957 All 411; *P.E. Mathew v. Union of India*, AIR 1999 Ker 345.

¹⁴ *Krishna Singh v. Mathura Ahir*, AIR 1980 SC 707; *Ahmadabad Women Action Group (AWAG) & Ors.v. Union of India*, AIR 1997 SC 3614.

¹⁵ In *Sant Ram*, Supra note 62, the Supreme Court stated that, by reason of the word ‘includes’ in Article 13(3)(a), the definition should not be treated ‘exhaustive’. The Calcutta High Court in *Ezra v. The State*, AIR 1953 Cal 263, have held that ‘law includes personal law.’ The Supreme Court in, *C. Masilamani Mudaliar v. Idol of Sri Swaminatha swami*, AIR 1996 SC 1697, at p 1700 has observed: “Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they become void under Article 13 if they violate fundamental rights....” The Supreme Court, in this case, while not referring specifically to the principle laid down in *Narasu Appa Mali*, (Supra note 30), has impliedly overruled the same.

b) Conflict of personal laws, which aims at reforming existing laws found to be arbitrary , unconstitutional with Article 25 of the Indian Constitution.

The Indian judiciary ever since the inception of the Indian Constitution , has been facing a dilemma in deciding the inter relation of personal laws and Part III of the Indian Constitution. One of the landmark and important judgment in this connection, which throw some light on this dilemma is the Narasu Appa Mali Case.

(B) State of Bombay V. Narasu Appa Mali

Relating to the “Bombay Prohibition of Bigamous Marriage Act 1946, the validity of which was challenged on the basis of Article 14, 15 & 25 of the Constitution of India, Major issues involving the case were:

- a) Whether the personal laws of Hindus is “law” within the meaning of Article 13(3) (b) and Article 372(3), Explanation 1?
- b) Whether an alteration of the personal law of one religious community, without a similar alteration in that of others, violates equality under law?

It was held by the court that-

1. Personal laws are not included in the “law” referred to in Article 13(3) and are not the “law in force” referred to Article 372(3). Bombay prevention of Hindu Bigamous Marriage Act, 1946 was found not to be violative of Article 14 as the State was free to bring in social reforms in stages.
2. If religious practices are opposed to public order, morality or a policy of social welfare, duty of which is upon the State, then the good of the people of the State as a whole will be preferred over religious practices.¹⁶

VI. DEVELOPMENT IN THE UNIFORM CIVIL CODE DUE TO JUDGMENTS OF SUPREME COURT

The origins of UCC date back to the 19th century, when the country’s leaders emphasized the necessity for uniformity in the codification of Indian law with regard to crimes, evidence, and contracts but particularly advised against codifying the personal laws of Hindus and Muslims. Dr. B.R. Ambedkar had mixed feelings on the matter and believed that UCC was merely a suggestion rather than an imposition. “I do not think that the time is ripe in India at the present

¹⁶ Puniyani, Riya, Uniform Civil Code and Conflicts of Personal Laws (July 4, 2020). Available at SSRN: <https://ssrn.com/abstract=3643457> or <http://dx.doi.org/10.2139/ssrn.3643457>

moment for me to try to push it through,” Pandit Jawahar Lal Nehru stated. Important cases related to UCC are:

1. Shah Bano Case¹⁷

The Shah Bano case, also known as Mohammad Ahmed Khan v. Shah Bano Begum, was brought before the Indian Supreme Court for the first time in the year 1985. The court instructed Parliament to draught a Uniform Civil Code in connection with the case. Shah Bano’s case was about obtaining maintenance money from her husband after she had triple talaq in accordance with Section 125 of the Code of Criminal Procedure.

The Muslim Women (Right to Protection on Divorce) Act of 1986, however, allowed the government to overturn the judgment in her case. According to this Act, a Muslim woman was not permitted to request maintenance under the earlier Act. By 2017, Triple Talaq, also known as talaq-e-bidat in the community, had been declared unconstitutional and illegal.¹⁸

2. Sarla Mudgal Case¹⁹

The Sarla Mudgal Case, which raised the issue of bigamy and disagreement over marriage-related issues within the current personal laws, was another significant case that gained attention. The Hindu Marriage Act of 1955 states that just one of the grounds enumerated therein may be used to dissolve a Hindu marriage that has been solemnized in conformity with Hindu law, according to the court. Since the Hindu marriage is not immediately void under the law, a second marriage that is solemnized after converting to Islam would be prohibited under section 494 of the Indian Penal Code (IPC).²⁰

VII. CHALLENGES IN IMPLEMENTING THE UNIFORM CIVIL CODE

- India is a nation characterized by its multitude of religions, cultures, and traditions. Many religious and minority groups perceive the Uniform Civil Code (UCC) as a violation of their religious freedom and cultural autonomy.
- They express concerns that the UCC might impose a dominant or uniform law that disregards their unique identities and diverse practices.
- One of the key challenges in implementing the UCC is the absence of political will and consensus among the government, legislature, judiciary, and civil society.
- There is a lack of agreement and unity regarding the initiation and execution of the

¹⁷ Mohd. Ahmad Khan v. Shah Bano Begum and Ors. , AIR 1985 SCC 945.

¹⁸ Uniform Civil Code , <https://www.studyiq.com/articles/uniform-civil-code/> (last visited on 04 August 2023).

¹⁹ Sarla Mudgal and Ors. v. Union of India , AIR 1995 SC 1531.

²⁰ Ibid (17)

Uniform Civil Code.

- Implementing the Uniform Civil Code would necessitate an extensive undertaking, involving the drafting, codification, harmonization, and rationalization of the diverse personal laws and practices observed in India.
- Furthermore, it would require broad consultations and active participation from various stakeholders, including religious leaders, legal experts, women's organizations, and others.²¹
- Minorities worry that, in the name of uniformity, the culture of the majority will be imposed upon them. It will be extremely difficult to bring all of these individuals together given the vast cultural variety of India. The adoption of the Uniform Civil Code is challenging because of the patriarchal outlook of Indian society. This may be observed in the fact that Hindu women only inherit a portion of the land to which they are entitled despite the Hindu Code Bill has been in place since the middle of the 1950s.

VIII. CONCLUSION

The Indian Legislature must find a route forward towards growth by adopting the Uniform Civil Code. A Uniform Civil Code represents justice and should not be compromised. A single civil code should apply to the entire country. The Indian Constitution states in Article 44, that "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." As a result, India will be included into the UCC. The Uniform Civil Code is a symbol of a modern progressive nation, and the country is achieving new heights in other sectors as well. It will also aid in the reduction of vote bank politics. Under the UCC, all Indians will be treated equally. The Uniform Civil Code will advocate for true secularism. Personal laws as they currently exist have a loophole. As a result, the Uniform Civil Code should operate in the best interests of all religions. To appreciate the spirit of such a rule, people must have a progressive and open-minded viewpoint. Furthermore, because the topic is sensitive in nature, a committee of distinguished jurists should be formed to maintain uniformity and to avoid hurting the sensibilities of any particular community.

The application of Uniform Civil Code will secure the abolition of gender, creed, religion, and caste discrimination. Women's empowerment can be secured with the passage of the Uniform Civil Code. UCC would aid in the establishment of a secular Indian society by ensuring the abolition of some discriminatory laws in every personal law of every faith. The Uniform Civil

²¹ Understanding the Uniform Civil Code <https://triumphias.com/blog/understanding-the-uniform-civil-code-ucc-in-india-pros-cons-and-challenges> (last visited on 04 August 2023)

Code will assist to reduce the complexity of diverse laws, but it will not be without problems. While implementing the law, Uniform Civil Code is encountering some difficulties. The most important concern that legislators must address before enacting Uniform Civil Code is taxation for Hindu Undivided Families. The country's varied tribal laws, as well as customary laws of many religions, make implementation of Uniform Civil Code difficult. A widespread assumption among minorities in this country that Uniform Civil Code will impair their religious beliefs and legislation has made enacting Uniform Civil Code difficult. Article 25, which guarantees religious freedom, has become a stumbling block in the implementation of the Uniform Civil Code. As a result, parliament must ensure that the parties involved in this topic are consistent with the legislature when implementing the Uniform Civil Code throughout the country.
