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# Uniform Civil Code in India: The Struggle for Implementation

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## ABSTRACT

*“Let us forget I am Hindu and you are Muslim let us think I and mine in a common Indian nationality”*

*The Uniform Civil Code (UCC) has been a contentious issue in India since the framing of the Constitution in 1948. The UCC proposes to abolish personal laws and establish a single code applicable to all citizens, regardless of their religion or community. However, due to the vast diversity of the country and the complexity of regional ethnicities, customs, and social structures, the UCC was not adopted at that time. Instead, Article 44 of the Indian Constitution made it an optional provision, emphasizing the need for a uniform civil code in the future.*

*This paper explores the historical background and the opposing viewpoints surrounding the implementation of the UCC. It delves into the reasons for the prolonged delay and the challenges faced by policymakers and society in adopting a uniform civil code. Additionally, it examines the changing dynamics of Indian society over the past seven decades and considers whether the time has come for India to introduce a uniform civil code.*

**Keywords:** *uniform civil code, secularism, constitutional aspect, diversity, right to religion.*

## I. INTRODUCTION

The Law Commission of India recently sought fresh suggestions from various stakeholders, including public and religious organizations, regarding the highly debated topic of the Uniform Civil Code (UCC).<sup>2</sup> India, a nation rich in culture and religion, is home to diverse populations practicing various faiths. The country's linguistic diversity is equally remarkable. This diversity is evident not only in religious practices but also in ethnicity, customs, and social structures. India's vibrant cultural heritage attracts people from around the world who seek to experience its unique traditions.

Different religious communities in India are governed by distinct personal laws. For instance, the Hindu Marriage Act of 1956 governs marriage, divorce, and alimony matters for Hindus,

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<sup>2</sup> Law commission of India & solicits views & ideas of the public and recognized religious organizations about & uniform civil code (no date) Press Information Bureau. Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1932397> (Accessed: 16 June 2023).

Sikhs, Jains, and Buddhists, while Christians and Muslims follow their respective religious laws. However, these personal laws often exhibit disparities and contradictions, leading to complex challenges in establishing a fair and unified legal framework.

One pressing issue is the denial or lack of recognition of women's rights in certain personal laws. To address these shortcomings, the enactment of a uniform civil law has been proposed. Presently, Indian laws are shaped by factors such as caste, culture, religion, and geography. Some states, like Nagaland, Mizoram, and Meghalaya, are exempt from mainstream legislation and create laws based on their specific customs and practices, even if they may seem outdated. Such laws aim to preserve the cultural identity of these states. However, personal laws originated from religious texts, often leaving women vulnerable and dependent on men.

Visionaries like Dr. B.R. Ambedkar and Jawaharlal Nehru have long advocated for the abolition of personal laws and the introduction of a uniform civil code. Dr. Ambedkar particularly questioned the extensive authority granted to religion, stating, "Personally, I don't understand why religion should be given such vast jurisdiction to cover all aspects of life and prevent legislators from encroaching upon its territory."<sup>3</sup> He highlighted the need to utilize freedom to reform a social system plagued by inequities, inequalities, and discriminatory practices.

In this paper, we aim to explore the importance of the Uniform Civil Code debate in India. By analysing the legal framework, and socio-cultural factors involved, we seek to delve into the merits and challenges associated with implementing a uniform civil code in a diverse nation like India.

## **II. CONSTITUTIONAL FRAMEWORK**

Article 44 of the Constitution of India is a part of the directive principles of state policy, and as the name suggests, these are the guidelines for good governance in the state. They are not required to be followed, and they are not legally binding. The constitution of Indian doesn't make it necessary for state to implement UCC. The apex Court of India has directed the government in several cases to create a uniform civil code, but this has yet to be accomplished due to political will on all sides. Several attempts were made before and after independence to implement it, but none were successful. It is mainly because people in India are so much into religion that they cannot afford to just give up their personal laws. Personal laws, on the other hand, are biased in all religions and must be abolished.

Article 14 of the Constitution of India ensures equality among all. But it also allows reasonable

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<sup>3</sup> Constitutional Assembly Vol,7,p.781

classification and clears the way for making personal laws according to their own fancy.<sup>4</sup> Religious leaders have taken advantage of the cultural freedoms provided by Articles 25–28 of the Constitution<sup>5</sup> to manipulate people for a long time. This creates a conflicting situation where one guaranteed freedom allows us to create our own personal laws, but it clashes with another fundamental right guaranteed by Article 14. It is essential for us to determine what is a reasonable classification in such cases.

I strongly believe that framing personal laws in a way that oppresses and mistreats women, under the influence of religion and customs, is a clear violation of our fundamental rights protected by Article 14. It is unacceptable to keep these laws beyond the reach of judicial review as stated “Personal laws do not fall within the definition of “law” as defined in Article 13(3)(a).”<sup>6</sup>

### III. SECULARISM AND UNIFORM CIVIL CODE

The concept of secularism has its origins in Europe, which means that religion should not interfere with the policy matters of the state. India is a secular country in which people of different religions reside; this includes Hindus, Jains, Buddhists, Muslims, Christians, etc. The word "secularism"<sup>7</sup> was not there when the Constitution was enacted; it was added to the preamble of the Constitution in the 42<sup>nd</sup> Amendment in 1976<sup>8</sup>. Over the years, the term has been misunderstood by many parts of society. Secularism ensures that no one in this country is discriminated against because of their religion and everyone shall have the freedom to follow the religion of their choice. The right to freely profess, practice, and propagate religion is guaranteed by Article 25 of the Indian Constitution. Now, enactment of the uniform civil code means abolishing the personal laws that are based on one's custom and religious practice. They are mistaken in that the state, though irreligious, is not anti-religious. The Uniform Civil Code will not hinder people's beliefs. It will not interfere with the mundane activities of day-to-day life. In the case of *S.R. Bommai v. Union of India*,<sup>9</sup> it was held that "religion is the matter of individual faith and cannot be mixed with secular activities. “But secular activities can be regulated by the state by enacting a law." The protection given under articles 25 and 26 does not only pertain to matters of pure religion. It also extends to the acts done in pursuance of the same. Thus, a uniform civil code that brings uniformity to rituals, ceremonies, and modes of

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<sup>4</sup> The Constitution of India, 1950, Art. 44.

<sup>5</sup> The Constitution of India, 1950, Art. 25, 26, 27 & 28.

<sup>6</sup> State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84

<sup>7</sup> The Constitution of India, 1950, Preamble (SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC)

<sup>8</sup> The Constitution (Forty Second Amendment) Act, 1976.

<sup>9</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1 : AIR 1994 SC 1918

worship in order to uphold the larger interests of public order, morality, health, etc. is not violative of constitutional provisions.

#### **IV. THE NEED OF AN HOUR**

There is a prevalent misconception among people that the Uniform Civil Code (UCC) will impose Hindu laws on everyone, but this notion is unfounded. Even the BJP has stated that the UCC will incorporate the best provisions from different personal laws. The UCC aims to ensure that all individuals in India are governed by the same law, without limiting their religious freedom or cultural practices. Its implementation will safeguard the principle of secularism and address the longstanding exploitation of women in our society.

Throughout history, we have witnessed the dominance of men in society, and it is high time to challenge this bias. The UCC will help break this pattern and eliminate the manipulation of religion for political gain. By establishing uniform laws, politicians will no longer be able to mislead both minority and majority communities. Moreover, the UCC will foster equality among citizens, benefiting society as a whole.

One of the greatest advantages of a uniform civil code is the creation of a more egalitarian society, where all individuals are governed by the same laws pertaining to personal matters. The absence of a UCC undermines the credibility of secularism in India and perpetuates social disparities. Different personal laws currently handle issues such as marriage and succession in various ways. Introducing an element of uniformity in these matters, overseen by the state, is crucial.

Additionally, the absence of a Uniform Civil Code leads to a significant waste of the court's time and resources. With different personal laws governing different communities, disputes arise, and individuals often seek legal recourse to resolve conflicts arising from contradictory laws. This not only burdens the judiciary but also delays the delivery of justice.

By implementing a Uniform Civil Code, the court's time can be better utilized, as conflicts arising from personal laws would be minimized. The code would provide clarity and consistency in legal matters, reducing the need for lengthy court battles and ensuring a more efficient judicial system.

#### **V. COMPLEXITIES IN IMPLEMENTATION**

The concept of a Uniform Civil Code (UCC) in India is often misunderstood and subject to various misconceptions. Many view it as a political agenda aimed at homogenizing minority groups into the majority religion, but this oversimplification fails to grasp the complexity of the

issue. With India's vast population and diverse interests, implementing a UCC poses significant challenges and risks potentially disregarding the sentiments of various communities. Personal laws, rooted in religious scriptures, have historically been respected and preserved, adding to the complexity of the debate. In the current socio-political climate, finding a balanced approach to implementing the UCC is a daunting task.

The question at hand is whether India can adopt a comprehensive Uniform Civil Code that covers various aspects such as marriage ceremonies, divorce, maintenance, inheritance, adoption, and property succession, while simultaneously preserving the diversity inherent in personal laws and maintaining an appropriate link between religion and law in a modern, pluralistic society. The framers of the Indian Constitution aimed to unite and integrate the diverse religious faiths within the country, but achieving this goal has proven challenging. India is a secular republic that upholds the fundamental right to freedom of religion, as guaranteed by Articles 25 to 28. Additionally, Articles 29 and 30 safeguard the rights of minorities to practice their own faith, culture, and customs, further complicating the implementation of a uniform code.

Understanding these perspectives highlights the need for strong political will, along with a sense of tolerance and mutual respect for all religions and regions of India, in order to effectively implement a Uniform Civil Code. Striking a balance between unity and diversity is crucial to ensure that the rights and beliefs of all citizens are respected, while promoting a cohesive society.

## VI. JUDICIAL PRONOUNCEMENTS

In the case of *Ahmed Khan vs Shah Bano Begum*<sup>10</sup>, the Hon'ble Supreme Court of India ruled that women are entitled to maintenance under Section 125 of the Criminal Procedure Code, 1973. The court dismissed the husband's contentions and upheld the rights of the woman. However, this decision faced criticism from Islamic leaders who threatened to disrupt public harmony through protests. Subsequently, the Rajiv Gandhi-led central government passed the Muslim Women's (Protection of Rights on Divorce) Act, 1986, which denied Muslim women the right to maintenance under the Criminal Procedure Code, 1973.

In the case of *Sarla Mudgal and others v. Union of India*<sup>11</sup> and others, the court held that marriages solemnized under the Hindu Marriage Act, 1955 can only be dissolved through

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<sup>10</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945 : 1985 Cri LJ 875

<sup>11</sup> Sarla Mudgal v. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569 : AIR 1995 SC 1531 : (1995) 2 KLT 45 : (1995) 2 An LT (Cri) 50 : 1995 Cri LJ 2926

procedures outlined in Hindu law.

In *Shayara Bano vs Union of India*<sup>12</sup>, the Supreme Court of India, in a majority decision of 3:2, declared the practice of triple talaq (talaq-e-biddat) as unconstitutional. This landmark case has reignited the debate on the implementation of a Uniform Civil Code in India.

## VII. CONCLUSION

According to me, the imposition of a Uniform Civil Code in India is necessary to protect the secularism of the country and maintain its integrity. The existing personal laws in India are misogynistic and should be abolished. Implementing a Uniform Civil Code would foster a sense of unity within society and establish a true definition of equality among citizens. It is believed that "Uniform Civil Code will help the case of national integration by removing disparate loyalties to laws which have conflicting ideologies."<sup>13</sup>

However, it is important to consider certain factors while enacting a Uniform Civil Code. It should primarily incorporate modern and progressive laws, while also addressing the concerns and issues faced by minority groups. These concerns include insecurity, loss of identity, and marginalization within Indian society. For a common civil law to be successful, it requires support and acceptance from different communities.

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<sup>12</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277 : 2017 SCC OnLine SC 963 : AIR 2017 SC

<sup>13</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945 : 1985 Cri LJ 875