
An Analysis of Uniform Civil Code in Indian Scenario

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Abstract

One of India's most contentious constitutional goals is the Uniform Civil Code (UCC), which is established in Article 44 of the Directive Principles of State Policy. All citizens, regardless of faith, are to be subject to a shared set of civil laws that regulate personal affairs including marriage, divorce, inheritance, and adoption. Promoting national integration, ensuring gender justice, and upholding the equality and secularism enshrined in the Indian Constitution are the goals of the UCC. However, because of India's great religious, cultural, and ethnic variety, the UCC's implementation there is still controversial.

In India, religious ideas have traditionally governed personal legislation, with various communities—Hindu, Muslim, Christian, and others—following their own traditions. The rights of women have been disproportionately impacted by the disparities and injustices brought forth by this heterogeneous legal system. Proponents of the UCC contend that a unified body of legislation will create a unified civil framework and eliminate discriminatory practices ingrained in personal laws. They stress that in order to protect fundamental rights and advance gender equality, secular democratic governance requires legislative uniformity in civil concerns. Opponents of the UCC, on the other hand, believe that it is imposing majority norms on minority communities and could undermine cultural and religious identities. Instead of a general uniform code, they support reform within specific personal laws. Concerns over timing, political motivations, and the requirement for stakeholder consensus are all brought up in the argument. Interest in the UCC has been rekindled by recent court rulings and public discussions, and certain governments have indicated their intention to investigate its adoption. However, inclusive discourse, pluralism awareness, and progressive reform are necessary for the UCC to be properly implemented. The UCC's acceptance and sustainability in the Indian setting depend on a well-rounded strategy that upholds justice and equality while honouring India's uniqueness.

Keywords: Uniform Civil Code (UCC), Secularism, Gender Justice, Personal Laws, Legal Uniformity, Cultural Diversity



Introduction

One important and much disputed issue in the Indian legal and political system is the Uniform Civil Code (UCC). The UCC, which has its roots in Article 44 of the Indian Constitution's Directive Principles of State Policy, promotes a single set of civil rules that apply to all citizens, regardless of their religious affiliations, and regulate personal affairs including marriage, divorce, inheritance, and adoption. The concept, which seeks to eradicate inequalities in personal laws and provide equal rights for all people, especially women, is based on the ideas of equality, secularism, and national integration.

Currently, religious traditions and conventions control India's personal laws, creating a varied and frequently contradictory legal system. Although this system honours the nation's heterogeneous culture, it has also resulted in legal disparities, particularly when it comes to issues that impact women and under-represented groups. The UCC's supporters contend that bolstering the constitutional goal of an egalitarian and secular society requires a single civil code. Nonetheless, the idea of enacting a UCC has continuously generated discussion, with opponents voicing worries about cultural autonomy, religious freedom, and the possible marginalisation of minority groups. Maintaining India's cultural and religious diversity while yet requiring significant legislative reform is a difficult task.

The UCC has regained national attention in recent years due to a combination of political interest, judicial interventions, and growing public discourse. The dilemma of whether India can balance its deeply ingrained religious pluralism with its commitment to equality and secularism still stands as the nation develops into a contemporary democracy. The intricacies of the UCC, its background in history, its legal ramifications, and the future of the Indian situation are all examined in this research paper.



Concept of Uniform Civil code and India

Different religious groups in India follow distinct personal laws. Marriage, divorce, child custody, support for divorced women, guardianship, adoption, succession, and inheritance are the primary topics of personal laws. While personal law deals with day-to-day matters, religion addresses ideas like salvation, immortality, devotion to God, and the pursuit of spiritual goals. In order to govern everyone fairly, regardless of religion, caste, or tribe, the Uniform Civil Code seeks to standardise secular laws of a comparable kind. It restores the rights of the citizens who are subject to various personal laws according to their religion or caste.

Important topics covered by the civil code include marriage, divorce, adoption, and the purchase and management of property. Despite the fact that Article 44 of the Indian Constitution inserts the Uniform Civil Code into the Directive Principles of State Policy, it is regrettably not enforceable by the courts because of a number of issues that make it a non-justiciable right.

The phrase “Uniform Civil Code¹” is made up of three terms. “Uniform” describes an object that is different from the norm or something that is constant and unalterable in all situations. “Civil” comes from the Latin term “Civilis,” which means a citizen, and “Code” comes from the Latin word “codex,” which means a collection of laws that were first inscribed on wax-coated wooden tablets and then on paper or papyrus sheets.

The Uniform Civil Code's introduction is viewed as a step towards secularising personal laws that are independent of religion. In India, a comprehensive civil law code that applies to all citizens, irrespective of their religious origin, is referred to as a uniform civil code. In essence, there are two parts to the UCC notion.²

¹ P. K. Pandey (ed.), *Human Rights and Gender Justice*, 17 (APH Publishing Corporation, New Delhi, 2012), Available at SSRN: <https://ssrn.com/abstract=2485380>

² Uniform Civil Code Towards Gender Justice, *available at*: <https://lawcorner.in/uniform-civil-code-towards-gender-justice/>



Why there is need for Uniform Civil Code

- A uniform civil code will guarantee that all Indians, regardless of caste, religion, or tribe, adhere to the same national civil code of conduct, which will lead to greater integration than has been achieved since independence. The current biased treatment of some religious communities by the law fuels a great deal of animosity, which can be avoided with a uniform civil code.³
- Vote bank tactics, which political parties frequently engage in during elections, would be lessened with the implementation of a standard civil code. State employees won't be able to give particular minorities' preferential treatment in return for their plebiscite if all religions are subject to the same rules. True democracy suffers from the lack of a unified civil code, which requires reconsideration.⁴
- In essence, the different personal laws are a tool used by the powerful to take advantage of others. We do nothing to confront the decisions that our panchayats consistently make that violate our constitution. Human rights abuses including female feticide and honour killings happen all over the nation.⁵
- A uniform civil code, a sign of a modern and enlightened nation, shows that caste and religion politics are not prevalent there. Although it has been a leader in economic growth, social advancement has lagged. We are neither modern nor traditional, and our culture and society have deteriorated. Establishing a uniform civil code can help advance society and get India closer to its objective of being a developed country.⁶
- The situation of women in India can be improved by enacting a standard civil code. Because of the strong male prejudice in our society and the persistence of antiquated customs, Indian women are being oppressed and abused. These practices, which are no

³ Uniform Civil Code- Indian Polity, *available at*: <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

⁴ *Ibid*

⁵ D.C. Manooja, "Uniform Civil Code: A Suggestion" 42 *Journal of Indian Law Institute* 448-457 (2000)

⁶ *Ibid*

longer applicable in our culture where we value treating women equally and granting them equal rights, can be changed by a unified civil code.⁷

- India's personal rules favour certain religions over others, permitting Muslims to marry more than once while Christians or Hindus would be subject to legal repercussions doing the same. All residents are not being treated fairly and equally in this way. To guarantee that all Indians are treated equitably, all rules pertaining to marriage, inheritance, families, and land must be the same for all Indian citizens.⁸
- In India, selective secularism is practiced, with certain regions being secular and others not. Regardless of religion, all residents must abide by the same rules under a homogeneous civil code in order to guarantee equality. This method is impartial and equitable. Establishing a consistent common code guarantees that everyone is treated equally under the law rather than restricting someone's ability to practise their religion.⁹

Effects on the Application of UCC

1. Eliminating gender discrimination would be possible with the adoption of a consistent, national code. Even though women have been battling for equality for a number of years, many religions and rituals still favour males over women. Many religions have regulations that discriminate against women, especially when it comes to succession and inheritance. Equal treatment for men and women would be guaranteed by a unified code.¹⁰
2. UCC's introduction would encourage integrity nationwide. Having a single set of laws that apply to everyone, regardless of gender, socioeconomic standing, religion, etc., would promote national unity even in the face of disparate cultural norms.¹¹
3. India is a socialist, secular, democratic nation, as stated explicitly in the preamble of our constitution. India still has distinct laws for Muslims, Christians, and Hindus, among other

⁷ *Ibid*

⁸ *Ibid*

⁹ Uniform Civil Code in India, *available at*: <https://blog.finology.in/Legal-news/uniform-civil-code-india>

¹⁰ *Ibid*

¹¹ *ibid*



religions, even after gaining independence a number of years ago. Because of this, some people question if true secularism can be attained without enacting a Uniform Civil Code.¹²

4. After the Uniform Civil Code (UCC) is enacted nationwide, India is anticipated to see a profound social transformation this century. In contrast to other Muslim nations like Pakistan, Bangladesh, Turkey, and Morocco, where women have organised individual laws, Muslim women in India are now denied the ability to marry and divorce. Indian women, including those from Muslim and Christian communities, would have access to a structured individual legislation with the introduction of UCC, which will act as a springboard for new social development throughout the country.¹³

Challenges in Implementation of Uniform Civil Code¹⁴

- ***A danger to the peace in the communities***

Many religions, particularly minorities, are concerned with the idea of enforcing a Uniform Civil Code because they may believe it contradicts their values and beliefs. Before enacting the UCC, individuals in authority should win over minorities to ensure that the country's unity is maintained.¹⁵

- **The government's interference in personal freedoms**

There is a common misperception that the government regularly tampers with people's personal liberties. However, the Uniform Civil Code's only objective is to safeguard each and every citizen's rights.¹⁶

- **Not the right time for execution**

The Muslim community opposes the Uniform Civil Code's implementation, claiming that it is inappropriate at this time and that it should be examined alongside other

¹² *Ibid*

¹³ *Ibid*

¹⁴ Tanya Sharma, "Uniform Civil Code: A Detailed Analysis" 5 *Journal of India International Centre* 12 (2020).

¹⁵ *Ibid*

¹⁶ *Ibid*



contemporary issues, such as the authorities' silence on the saffronization of schools and beef-related controversies, which they say are concerning and illustrate how the rights of minorities are being overruled by the majority.¹⁷

- **India's Diversity**

Because of the great variety in our nation, implementing a uniform civil code is a difficult undertaking. Another barrier to creating a single rule for everyone is the presence of sociological disparities among different states and groups.

Judicial Pronouncements on UCC

In Case of *Mohd. Ahmed Khan v. Shah Bano Begum*¹⁸ A Muslim lady called Shah Bano, who was married to Mohammed Ahmad Khan, filed a petition under section 125 of the Code of Criminal Procedure at the municipal court in Indore in 1985, raising fundamental questions in the Shah Bano case. She asked for a maintenance payment for both herself and her kids. In accordance with Islamic law, the husband exercised his power to grant his wife an irrevocable divorce. He said that he was not required to pay her maintenance because she was no longer his wife, with the exception of the Rs. 5400 required by Islamic law. The matter was ultimately handled under the Criminal Procedure Code after the Supreme Court ruled in favour of Shah Bano, who had endured mistreatment in spite of her beliefs. However, there was significant discontent in the Muslim community as a result of this decision. The Muslim Women (Protection of Rights on Divorce) Act, 1986 was consequently passed, requiring husbands to support their wives throughout the iddat term. The judge granted Shah Bano maintenance in her case. This proves that all religions are subject to the same rules.

¹⁷ Muslim organisations divided on Uniform Civil code, available at

<https://www.thehindu.com/news/national/muslim-organisations-divided-on-uniform-civil-code/article67042429.ece> (last visited on Aug 12, 2021)

¹⁸ AIR 1985 SC 556



In case of *Smt. Sarla Mudgal v. Union of India*¹⁹ the problem with Sarla Mudgal's case was that the husband had completed the second marriage while converting to Islam, but he had kept the prior marriage intact. He cannot be held accountable for polygamy under the Hindu Marriage Act, 1955 if sections 5 and 11 are interpreted correctly. This is because provision 5 states, "If a marriage is criminalised between two Hindus." The Supreme Court has resolved the matter by ruling that the legislation that best serves the goal shall prevail in a conflict between two personal laws. Accordingly, it was decided that converting to Islam does not automatically mean that a Hindu law marriage will end.

In the *Daniel Latifi*²⁰ case, the Supreme Court of India ruled that, according to their interpretation of S.3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, a Muslim husband is still obligated to provide maintenance to his divorced wife even beyond the Iddat period. The Court acknowledged the difficulties in developing a single code for people of diverse religions, but it was disappointed that Art. 44 had not been put into effect. Since they have the legislative authority to do so, they have urged the State to act and establish a Uniform Civil Code (UCC). In the absence of such a code, some individuals are taking advantage of gaps in Hindu personal law by becoming Muslims in order to be married again. Under Section 494 of the Indian Penal Code, the court has ruled that such marriages are unlawful if the previous marriage has not been dissolved; nevertheless, under Articles 14 and 15 of the Indian Constitution, polygamy and other elements of Muslim personal law have not been ruled void. In order to defend the downtrodden and foster solidarity and national unity, the Court has called for a UCC.

In *Lily Thomas and Others v. Union of India*²¹ the argument that the ruling in *Sarla Mudgal v. Union of India* violates the rights protected by Article 21 of the constitution was rejected by the court. The Sarla Mudgal case's ruling has either changed the process or created new legislation for the

¹⁹ AIR 1995 SC 569

²⁰ AIR 1985 SC 740

²¹ AIR 2000 SC 1650



individual who was accused of committing an offence under section 494 IPC. Therefore, the issues that have emerged in the instances of *Mohamed Ahmed Khan v. Shah Bano* and *Daniel Latifi & others v. Union of India* would not have existed if the Uniform Civil Code had been made available to citizens as required by the constitution.

In *Triple Talaq Case*²² the significance of gender equity and equality in issues of personal law was further highlighted by the Supreme Court's ruling that immediate triple talaq (talaq-e-biddat) was illegal and void. The ruling called for a re-examination of long-standing customs that discriminate against women and emphasised the necessity of legislative changes to safeguard the rights and dignity of Muslim women. In conclusion, judicial decisions have been helpful in furthering the ideals of equality, fairness, and secularism in terms of personal law, even while legislative attempts to establish a UCC in India have been few and fragmented. These first legislative actions and court rulings have prepared the way for more extensive discussions and arguments over the necessity of extensive legal reforms in order to fulfil the goals of a UCC in India.

Conclusion

Despite a lot of discussion, not much has been done to advance women's rights and empowerment. One issue that requires addressed is how women are treated in personal laws. Muslim rules are still harsh and antiquated, putting women at the mercy of males, but the Hindu Code has seen substantial reforms. Implementing a Uniform Civil Code that treats both genders fairly and impartially is therefore essential. Justice Kuldeep Singh was right when he said that religion and personal laws are unrelated. The right to religion shouldn't apply to secular issues like marriage and succession.

²² AIR2017 SC 4609



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