



## A need of uniform civil code in India

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### Abstract

The Uniform Civil Code seeks to facilitate the establishment of a uniformly structured legislation that will reserve all civil law and individual religious freedom issues for all Indian religions. In order to achieve secularism, the UCC will override the personal laws of various religions, races, castes, and other groups by granting uniform personal laws to all religions. Its practices include the nondiscriminatory division of land and the consistency of the laws pertaining to marriage, divorce, succession, adoption, and guardianship. Protecting the rights of Indian women who practice various religions is another reason for advocating the UCC.

All denominations ought to uphold the UCC's "one country, one rule" tenet. Part 4, forty-fourth article of the Indian Constitution specifically mentions the term "Uniform civil code". Article 44 states that the government will work to ensure that all Indians have access to a common civil code.

**Keywords:** Uniform civil code, secularism, personal religion, discrimination, etc

### Introduction

The 1937 Irish constitution, which the Assembly had taken from the Spanish constitution, had the DPSPs. DPSP is defined in Chapter 4 of the Indian Constitution (Article 36-51). The state must put these measures into place in order to improve the idea of Directive Principles of the policies of the state are not new; our component society.

Article 44 of the Constitution says, "that state will try to ensure for the citizens a common civil code within the entirety of India." As per Article 37, the DPSPs cannot be enforced by any court.

Scriptures currently control personal laws. All of those private laws will be encoded into a UCC, which will then apply to every citizen equally, irrespective of their particular religion.

This article aims to present the benefits and drawbacks of a UCC, as well as any consequences that may alter the social structure of the entire nation.

### Objective of the Study

- To know, the realization of a uniform civil code would be beneficial for India or not.
- Know the challenges and problems face during the implementing the Uniform Civil Code.
- To look after the rights of women from all matrimonial matters, who discriminate only on religious prospect?
- Upholding the ban on discrimination based on caste, sex, religion, race, or place of birth found in Article 15 of the Indian Constitution, as well as the 14th article's promise of equality.

### Hypothesis

A Common Civil Code can be implementing in India and it will also benefit the nation and does not violate the right to profess one's religion.

### Origin of UCC in India

India established its own Law Commission in 1834. It was chaired by Lord Macaulay and was founded in accordance with Section 53 of the Charter of Rights Act of 1833. Every

non-Muslim and non-Hindu citizen in the presidential district is subject to a different set of laws. On the other hand, no rules applied to non-Hindu or non-Muslim residents of the Mofussil region. This led to a lot of false beliefs about the potential benefits of substantive civil laws for Christianity, Armenians, and Anglo-Indians. The group recommended combining England's substantive civil laws into a single act in its Lax-loci report. This law was intended to apply to all residents of the Mofussil region who are not Muslims or Hindus. Consequently, UCC was founded in India.

A later development, the 1937 Shariat law was passed as a result of pressure from the Muslim aristocracy. This statute mandates that Islamic laws of marriage, adoption, divorce, and support apply to all Indian Muslims.

Between the 1948–1951 & 1951–1954 sessions, the Hindu Law Commission discussed putting the UCC into effect. As an ardent supporter of UCC, the late Dr. B. R. Ambedkar believed that the group alone could change Hindu culture to protect Muslim women, who now have little to no rights under Shariat law. Nevertheless, the Act was approved in 1956 with significant amendments despite strong resistance. The bill consisted of four artists, which included;

- Hindi Marriage Act 1955
- Hindu Adoption and Maintenance Act, 1956
- Hindu Succession Act, 1956
- Hindu Minority and Guardianship Act, 1956

### Matters of Uniform Civil Code

Remember that the word "civil code" refers to the full corpus of laws that regulate private affairs such as marriage, divorce, child support, adoption, and inheritance in addition to property rights.

Certain subject matters of uniform civil code are as follow;

- Marriage, Divorce, and other matrimonial clauses;
- Succession (Inheritance);
- Guardianship;
- Adoption;
- Partition;
- Gifts and Wills;

- Religious Institutions;
- Joint Family System and Matters of Charitable trust, etc.

### **Why is there a demand for UCC**

There is a growing need for the UCC across the nation. But it also has some of its own false beliefs. Personal laws are characterized primarily by their total authority and absence of judicial monitoring. As a result, people believe that UCC is their only remaining option for getting rid of all types of discrimination in personal law. In reality, every law—personal, criminal, or financial is up for judicial review, and the judiciary has the authority to deem a law potentially illegal if it infringes on fundamental rights.

The statutes are the only exemption to the present judicial review requirement because they are not derived from or incorporated in Indian law. It is now essential to comprehend the thirteenth article of the Constitution. The thirteenth article of the Indian Constitution defines legislation that departs from, reduces, or otherwise contradicts with any of the provisions of section 3. Surprisingly, the High Court ruled in *State of Bombay v. Narasu Appa Mali* that the fundamental rights enumerated in Article 3 (12–35) of the Constitution do not apply to personal law. The ruling effectively protects personal laws from judicial review if they are too arbitrary or infringe fundamental rights. The Supreme Court maintained the same concept in the 1980 rulings *Krishna Singh v. Mathure Ahir*. However, SC panel with three judges declared in the 1996 *Masilamani Mudaliar* case that personal laws are unconstitutional if they infringe on fundamental rights. *Narasu Appa*'s spirit is still there, and the *Narasu Appa Mali* verdict has not yet been overturned.

It is further asserted that the following quote by Dr. Ambedkar is true: "I fail to see why faiths should have this immense, expensive authority to embrace life in its entirety and prevent the government from interfering in that domain". What purpose does our freedom serve, after all? We are entitled to this freedom in order to change the social structure and other aspects of our lives that go against our basic right to freedom. As a result, it is simple for anyone to imagine that personal law is going to be immune to state intervention.

### **Uniform Civil Code and Indian Judiciary**

It is actually impossible to create a unified civil law that regulates marriage, divorce, and succession throughout India because of the enormous range of religions and their practises. On the other hand, the judiciary has recently attempted to bring some uniformity across different personal laws through judicial activism.

The *Shah Bano* decision is the judgement that is most known. Muslim personal law states that the ex-husband is only required to support the ex-wife during the periods of *Mahr* and *iddat* (the waiting period after a divorce). However, the SC rejected the allegation and ordered *Shah Bano*'s husband to pay support in accordance with the same guidelines as are in place for other Indians.

### **Mohammad Ahmad Khan v. Shah Bano Begum**

After 43 years of marriage, *Shah Bano Begum*, a Muslim woman, was pushed by her husband. Thus, in accordance with section 125 of the Criminal Procedure Code of 1973, she relocated to SC for maintenance.

The appellant, who worked as an advocate, was married to the respondent in 1932. They had two daughters and three sons born out of wedlock. The respondent was ejected by the appellant from her marital home. Then, at a magistrate court, the respondent asked for maintenance. Following their divorce, the appellant argued that she was no longer entitled to support because she was no longer married to the respondent. After the magistrate mandated monthly maintenance payments of 25 rupees, the respondent filed a review plea in the High Court. The appellant filed an appeal with the SC after the respondent's monthly payment was increased by the High Court to rupee 179.20.

The case was taken before the Constitutional Bench after *Ahmad Khan* initially addressed the two-judge SC bench. The court felt that the issue should be decided by the bench's five judges. The court is debating whether Muslim women were covered by section 125 of the Criminal Procedure Code. The Supreme Court cited section 125 of the Criminal Code, which extends to all citizens irrespective of faith, to maintain *Shah Bano*'s case. The Indian Constitution's Article 44 was still in force, Chief Justice Y.V. Chandrachud continued. A standard civil code, it was maintained, was required to improve access to justice for all residents, free from gender discrimination.

This decision sparked numerous national conversations. The Indian government deemed the Muslim Women (Right to Protection on Divorce) Act of 1986 to be invalid, restricting the ability of Muslim women to seek aid in accordance with section 125 of the Code of Criminal Procedure.

In the *Lily Thomas v. Union of India* case, the Supreme Court reaffirmed the need of a unified civil code, the only other case, but it also stated that the government was not required to establish the UCC because it was not mandated by the court and was a part of the Directive Principles.

A Muslim filed a case under Article 32 in *Shabnam Hashmi v. Union of India*, urging the adoption of kids from all religious backgrounds. In order to prove he was her adopted daughter's biological father, he filed a petition. The petitioner is referred to as the guardian, not the parent, in Muslim personal law. In this case, the Supreme Court upheld the adoption's legality as well as the Muslim's ability to utilize the juvenile justice act. The act's secular nature and its application to all Indian citizens, irrespective of their religious beliefs, were recognized by the court. The court ruled that situations involving adoption that impact family law necessitate a uniform civil code.

In *Sarla Mudgal Kalyani v. Union of India*, Additionally, the administration was instructed by the Supreme Court to focus on Article 44 of the Indian Constitution. In this case, the question was whether a Hindu spouse who had previously been married in accordance with Hindu law might get married again by converting to Islam.

A woman filed a writ suit against her husband after finding out that he had wed a second wife during his lifetime and then converted to Islam to avoid being subject to section 494. According to the Supreme Court, converting to Islam in order to get into a second marriage is an abuse of personal law. Additionally, it was stated that if the first marriage, which was done in accordance with Hindu tradition, is not dissolved, the second marriage is invalid under IPC section 494.

*Union of India v. John Vellamatton and Others* In this instance, a Keralan priest named *John Vellamatton* questioned the validity of the 118th section of The Indian

Succession Act, which deals with non-Hindus in India. Mr. Vallamatton claims that Christians are unjustly prevented from donating property to charities or religious reasons by section 118 of the Act. The bench nullified and determined the clause to be illegal.

Mary Roy lost a piece of property in the matter of Mrs. Mary Roy v. State of Kerala &ors since only boys had the right in this circumstance. The Indian Succession Act of 1925 is superseded in the region where she resides by the Travancore, which Succession Act of 1916. As an outcome of this conduct, the minor daughter has no stake in the property. She went to the court after that. The Indian Succession Act of 1925, not the Travancore Succession Act of 1916, was recognized as the pertinent statute after the Supreme Court ruled in favor of Mary Roy.

Albert Anthony v. Union of India involved a divorce with mutual consent and a two-year judicial separation period. Albert Anthony claimed that the one-year judicial separation time in section 10 of the Hindu Marriage Act of 1955, section 13(B) of the Special Marriage Act of 1954, section 28 of the Special Marriage Act of 1954, section 32 of the Parsi Marriage Act of 1936, the one-year judicial separation time in personal law for any faith, as well as the one-year judicial separation time in our religion were all examples of discrimination against us. So why do people still treat us differently?

So, SC decide that the period of Judicial Separation for all religion is one years, and informed the government to pass or modify the legislation.

### **UCC is the Burning Issue of today**

The controversy around the Uniform Civil Code has been in the press for a while. The uniform civil code was twice introduced as a Private Member Bill in the Rajya Sabha in the most recent month; however, the opposition petitioned the chairman to stop it. It is now anticipated that the government may introduce the bill during the future legislative session as a result.

### **UCC in Goa**

Goa is the only area in India with a common civil code that is based on common law family law. Goa first accepted the Portuguese Civil law Code, which is still in force today, and kept it after the state gained independence.

Goa's progressive Uniform Civil Code allows equal property and income division amongst husband and wife and between offspring (male or female).

All births, marriages, and deaths need to be voluntarily recorded. There are numerous provisions pertaining to divorce. Muslims who legally marry in Goa are not allowed to practice polygamy or triple talaq divorce. All assets and riches gained or possessed during a marriage are retained jointly by each spouse. Both spouses are entitled to one-half of the property in the event of a divorce, and the surviving spouse gets to keep half of the property in the occasion of the decedent's death. The parents cannot completely take away their children's inheritance. They are required to leave the kids with at least half of their possessions. The children must split this inherited property evenly.

Nevertheless, there are a few errors and the code is not totally standard. The Gentile Hindu standards of Goa, for example, specify the conditions under which a Hindu man is legally permitted to practice bigamy (i.e., if the wife is not able to carry children by the tender age of 25, or if she is not

able to carry male children by the age of 30). In some communities, polygamy is illegal.

### **Advantage and challenges of UCC**

#### **Arguments in favor**

India will be combined, a country with many different beliefs, customs, and rituals. A uniform civil code will help bring India closer together that it has been in the past since gaining independence. Regardless of castes, faiths, or ethnicity, that will help bring all Indians together under a common national civil code of conduct.

A UCC will assist to lessen vote-bank politics, which are used by most political parties in every election.

The absence of personal law By passing personal laws, we have built a new legal system founded on ideas that go back thousands of years. A comprehensive civic code would change that.

It is evidence that the nation has evolved into a modern, enlightened one, transcending the issues of caste and religion. The significant advancements we have made in the economy have not kept up with our social growth. The creation of a UCC will benefit society and get India closer to achieving its goal of becoming a fully developed nation.

Women's rights will increase since all Indian women are subjected to oppression and brutality as a result of outdated cultural norms that still govern family life. Religious personal laws are patriarchal in nature. The status of women in India will likewise improve with a unified civil code.

A large number of particular personal legislation's provisions violate human rights. Religious freedom is protected under Articles 25 and 26, and the UCC does not oppose secularism. The legal system will become more cohesive as a result of the different personal laws being codified and harmonized. By doing this, the judiciary will be able to enforce the law more readily and effectively and it will also dispel the current misconception.

#### **Challenges in Its Implementation**

The fundamental problem is that religious freedom and secularism cannot coexist with equal rights. While Articles 14 and 15 guarantee the right to due process, Article 25 establishes the basic right to freedom of religion. Minorities struggle against the application of Article 25 by upholding it. Additionally, morality, public morality, and public order place restrictions on an individual's right to freedom of religion under Article 25.

However, secular activity is not covered under Article 25. The state should control religion, not the other way around. Whether or not UCC is included in state policy's guiding principles, these principles are meant to implement the benefits to society and varied The Part 4 provisions of the constitution respect and apply the protections offered by Part 3 of the constitution. The Indian Constitution's article 44 attempts to address the concerns of use diversity, regional cultures, and gender discrimination, along with articles 14, 15(3), 21, and 51-A.

According to a 2018 Law Commission of India report, the nation does not now require or desire a uniform civil code. The Commission maintains that secularism cannot be in conflict with the nation's well-established plurality. Minorities fear that, in the name of homogeneity, they are being compelled to accept the culture of the majority. Given the enormous cultural diversity in India, it will be quite

challenging to maintain uniformity among all of these people.

One of the other major challenges in implementing UCC is the matter of inheritance and succession. To this premise, many personal laws apply. In her PIL petition, advocate Ashiwini contested this, asserting that in order to safeguard women's rights to justice, equality, and dignity, standard legislation regulating succession and inheritance are necessary. But the issue still exists over the whole of our country. The Central government is making an effort to resolve this dispute.

### Suggestion

According to the foregoing understanding, my proposal for a standard civil code will be beneficial and preserve women's rights in this society. The legislative and courts of India should adopt the following steps in order to develop a unified civil code in our nation, which has many different religious sectors.

- Taking public opinion into account when implementing social reforms, for instance.
- They ought to lead the push for a common civil code.
- It ought to be expressly enacted and ought to incorporate the best feature of various civil laws.
- Without conflicting with other articles of the Indian Constitution, it should take action and find a solution.
- To comprehend the adoption of uniform civil laws, status quo provisions must be created.

### Conclusion

Taking into account the aforementioned ideas, we can conclude that while judges and legislators are working hard, it is difficult to create UCC in our country. The Indian government must take additional steps to enforce this vital component. It is past time to create a single civil code to stop the conflicts brought on by personal laws.

No matter what religion they practise, this code will protect the less powerful groups of women. It is preferable to frame UCC in a way that will decrease legal ambiguity and overlap due to the multiple personal laws acts that contradict with one another. A uniform civil code should be implemented, which will gradually change society. In conclusion, notwithstanding the fact that India is a varied country, parliament should act to develop and implement a unified civil code. An education-based awareness effort must be undertaken in order to comprehend the universal civil code.

### References

1. Introduction to the constitution of India, 1949
2. Criminal Procedure Code, 1973
3. Muslim Personal Law (Shariat) Application Act, 1937
4. Travancore Christian Succession Act, 1916
5. The Parsi Marriage and Divorce Act, 1936
6. Hindu Marriage Act, 1955
7. Hindu Succession Act, 1956
8. Hindu Law Committee Report 1951
9. <https://www.livelaw.in>
10. <https://www.legalserviceindia.com>
11. <https://byjus.com>
12. <https://blog.ipleader.in>
13. <https://dristiiias.com>
14. <https://www.allahabadhighcourt.in>
15. <https://www.thehindutimes.com>

16. Constitution of India, 1950
17. Article 44 of Constitution of India
18. <https://www.dristiiias.com>
19. AIR 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 BOM 775
20. 1980 AIR 707, 1980 SCR (2) 660
21. 1996 AIR 1697, JT 1996 (6) 98
22. <https://www.thehindubusinessline.com>
23. AIR 1985 SC 945
24. (2000) 6 SCC 224
25. (2014) 4 SCC 1
26. (1995) 3 SCC 635
27. (2003) 6 SCC 611
28. 1986 AIR 1011, 1986 SCR (1) 371
29. AIR 2015 SC
30. Law and Social Transformation, P Ishwara Bhat, Eastern Book Company, Reprint, 2012, 746.