



THE IMPORTANCE OF UNIFORM CIVIL CODE VIS-À- VIS THE PERSONAL LAWS IN INDIA

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ABSTRACT

India is a diverse nation with multiple religions and languages. Such a diverse nation naturally has multiple codes and personal laws for governing the respective community's personal issues related to marriage, divorce, inheritance, et cetera. Article 44, which establishes a Uniform Civil Code (UCC) for India, is one of the Directive Principles of State Policy in Part IV of the Indian Constitution. The plan to replace India's current personal law systems with a Uniform Civil Code has sparked a never-ending debate. The Indian Judiciary has, on many occasions, highlighted the need for a Uniform Civil Code and has directed the Government of India to take steps in this regard. The path to a Uniform Civil Code in India is fraught with several challenges since it is a sensitive topic. Some of these challenges pertain to the apprehension of majority community rule in India, the non-relation of current Uniform Civil Code provisions with gender equality issues, et cetera.

This paper focuses on the relevance of a Uniform Civil Code in India at present vis-à-vis the Indian personal law systems. The paper briefly examines the historical development of the UCC. The paper

concisely analyzes some landmark Indian judicial pronouncements that addressed the issue of UCC. The paper also examines the challenges surrounding a successful adoption of UCC for India and attempts to provide suggestions to resolve the same while keeping in view the current developments in India. The paper concludes that keeping in view the strained communal relations in India, a UCC with clear and properly revised provisions would be most suitable for the interests of India in the present situation.

Keywords: *Uniform Civil Code, constitution, Article 44, religion.*

**‘There is no higher religion than human service. To work for common good is the greatest creed’
- Woodrow Wilson**

1. INTRODUCTION

The debates and discussions in India surrounding the Uniform Civil Code i.e. a common code applicable to all the communities irrespective of their caste, creed, religion, sex, etc. have grown manifold in recent times. The main ideal within the UCC under Article 44 of the Constitution of India isn't a recent development. The UCC and the debates related to its relevance have been evolving since almost a century.

Indian laws are of two broad natures: public law and private law. The former focuses on the relationship, rights, duties, and responsibilities between the state and the individual citizens. The latter focuses on the relationship between the private individuals in the society. An example of the former can



be constitutional law and that of the latter can be personal laws.¹

For the purposes of this article, a basic understanding of personal laws is needed. Personal law schemes can be seen all over the western world, and most post-colonial states have kept them. States continue to change their personal law regimes, as well as the legal and political institutions that regulate them. In India, a country of many religions, personal law has been the focus of intense legal discussion and change. India's personal law structure is primarily focused on communal religious identities of citizens.²

The topic of secularism is at the heart of UCC's principle. Secularism is a concept that requires in-depth examination. There are several different conceptions of secularism, and the UCC is both praised and mocked on the altar of all of them. Some people in our culture view the UCC as anti-secular, while others see it as a sign of communal unity and secularism.³ The Indian state upholds the concept of secularism i.e. the Indian state doesn't follow a particular religion but it'll respect all the religions and won't interfere unreasonably in religious practices.⁴ This has further fuelled the discussions regarding the need for the UCC in India. It won't be incorrect to call India a secular republic *de jure* rather than calling her a secular republic *de facto*. Even after more than 70 years of Indian independence, the Indian judiciary is still compromising between the Fundamental Rights and the Directive Principles of State

Policy and India lacks a formal legislative and executive order for adoption of the Uniform Civil Code.⁵

2. THE HISTORICAL EVOLUTION: A BRIEF OVERVIEW

The debates regarding the establishment of a uniform system of personal laws in India dates back to the times of the British Raj in India. Prior to the colonial period, the state kept its hands off the personal laws of its subjects. This was done to ensure peace and tranquility amongst the diverse sections of the Indian society and the consequent ease of ruling over them.

Initially, the Warren Hastings Plan of 1772 provided that the Hindus and Muslims were to take recourse of their respective personal laws in disputes related to inheritance, marriage, etc. The British, after consolidating their administrative position in India, changed the entire criminal law system and brought about the Indian Penal Code of 1860 which was aimed to be made uniformly applicable in India. Various matters of civil law were also brought under the British system of ruling.⁶ Although this resulted in the modification and interpretation of personal laws by the foreign British judges who had negligible ideas about the Indian

¹ Christa Rautenbach, *Phenomenon of personal laws in India: Some lesson for South Africa*, 39 The Comparative and International Law Journal of Southern Africa 241, 243 (2006)

² Jeffery A. Redding, *Slicing the American Pie, Federalism and Personal Laws*, 40 International Law and Politics 943, 961 (2008)

³ Shambhavi, *Uniform Civil Code: The Necessity and The Absurdity*, 1 ILI Law Review 12, 13 (2017)

⁴ St. Xavier's College v. State of Gujarat, 1975 SCR (1) 173 (India).

⁵ Busra Noor, *Uniform Civil Code: Should Be or Should Not Be*, 2 Amity International Journal of Juridical Sciences 151, 151-152 (2016)

⁶ M.P. JAIN, *OUTLINES OF INDIAN LEGAL HISTORY* 581-90 (N.M. Tripathi Pvt. Ltd. publishers, 1990)



scenario, the complete unification of civil laws related to family wasn't done.⁷

The Indian independence from the British Raj in 1947 led to intense debates on the application of a UCC for regulating the matters related to personal laws in the Indian community. The concept of equality provided in the Constitution of India and the Preamble therein and the unequal personal laws of the Indian communities contradicted vehemently with each other.⁸ To resolve the same, the makers of the Indian Constitution struck up an intricate compromise which was to mention the concept of Uniform Civil Code in the Directive Principles of State Policy as Article 44. Article 44 states that the Indian state shall endeavor to secure Uniform Civil Code for the citizens throughout the territory of India.⁹

It is to be noted that the Directive Principles of State Policy are the basic guidelines which the state should ideally take into consideration while formulating laws and policies. The aim of the Directive Principles is to establish a 'welfare state' and it aims to secure economic and social equality rather than a political equality. The Directive Principles are made to be unenforceable in the court of law although they complement the Fundamental Rights of the citizens. The Directive Principles depend on the economic capacity and the level of socio-economic development of the state.¹⁰ Thus, the catch here is that Article 44 i.e. Uniform Civil Code

cannot be enforced by the courts of law in India.

3. THE CONSTITUTION OF INDIA AND UNIFORM CIVIL CODE

The key issue is that if the makers of the Constitution wished for a UCC to be applied in India, they could not have put it under Article 44 of the Constitution as a part of the State Policy Directive Principles. Part IV (Art. 36 - 51) contains Directive Principles of State Policy, which are simply instructions to the government. They aren't required to be observed and aren't enforceable in court. They are simply constructive responsibilities on the part of the government that will aid in good governance. The Indian Constitution's Preamble notes unequivocally that India is a secular, democratic republic. This indicates there is no official religion. A democratic state does not discriminate against someone based on their religious beliefs. A religion is solely concerned with the relationship between man and God. It means that religion should not be allowed to interfere with a person's daily life. As a cause and effect, the mechanism of secularisation is inextricably linked to the goal of a UCC. In the case of *S.R. Bommai v. Union of India*, the Supreme Court of India ruled that religion is a matter of personal faith that cannot be combined with secular practises and can be governed by the State by legislation.

⁷ Werner Menski, *The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agendas*, 9 German Law Journal 224 (2008)

⁸ Dr. Parminder Kaur, *Personal Laws of India vis-à-vis Uniform Civil Code: A retrospective and prospective discussion*, LAW MANTRA (Dec. 13, 2020, 07:10 P.M.), <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/17.pdf>

⁹TanjaHerklotz, *Dead Letters? The Uniform Civil Code through the eyes of the Indian Women's movement and the Indian Supreme Court*, 49 Law and Politics in Asia, Africa, and Latin America 148, 152 (2016)

¹⁰Richa Singh, *Directive Principles of State Policy*, IPLEADERS (Dec. 13, 2020, 07:45 P.M.), <https://blog.ipleaders.in/directive-principles-state-policy/>



In India, there is a principle of constructive or positive secularism, which differs from the philosophy of secularism adopted by the United States and European countries, in which the state and faith are separated by a wall. Spiritualism and human faith are separated in India by constructive secularism. The explanation for this is that America and European states have been through the periods of renaissance, reformation, and enlightenment, and as a result, they will pass legislation prohibiting the state from interfering with religion. India, on the other hand, has not undergone any sort of revival or reformation, and it is therefore the state's duty to intervene in religious affairs in order to eliminate impediments to the state's governance. It is self-evident that a nation like India cannot experience renaissance. The odds are that, rather than diminishing, tensions will continue to escalate, with a negative impact on the regulations that are enacted. For example, a custom or tradition of one's own personal law may be permissible, but it may not be appropriate to citizens of other personal laws. As a result, when the traditions are put into motion, the essence of the dispute will shift from common disagreements to outright hostility. People find it difficult to embrace or adjust to such changes, and in a society like India, where faith determines the way of life, people identify with their religion rather than recognizing that human beings create the religion, not the religion creating human beings. Since some people still believe in fire, this idea finds itself in a cemetery. There must be a uniform legislation that controls and regulates the behavior of citizens of all faiths, not just one segment of the population. The Indian Constitution's Preamble declares the country to be a "Secular" Democratic Republic. This ensures that there is no state

religion, or, to put it another way, the state does not act on the basis of any one religion and does not discriminate based on religion. As enforceable human rights, Articles 25 and 26 of the Indian Constitution grant freedom of worship and freedom to administer religious affairs. Similarly, Article 44, which is not enforceable in a court of law, specifies that the state shall make every effort to ensure that India has a consistent civil code. The universal civil code is a method or legislation that rules persons in a consistent manner that does not discriminate on the basis of religion or faith.

When a new theory develops and becomes better known, a slew of questions and critiques emerge. A significant issue that emerged after the consolidation of personal laws was what the components of the UCC would be. Since each religion's personal laws include distinct provisions, their integration will cause not only discontent, but also animosity among the population. As a result, the UCC will need to include laws that strike a balance between the preservation of fundamental rights and the religious values of the various religions that exist in the nation. Marriage, divorce, and child support are examples of secular issues that can be regulated by statute.

4. THE STAND OF THE INDIAN JUDICIARY

The Indian Judiciary, particularly the Supreme Court of India has often highlighted the need of a Uniform Civil Code and has been an ardent supporter of the same. It has often advised the legislature to draft relevant statutes for the implementation of a UCC throughout India because the current Indian scenario demands the same.



The Supreme Court of India ruled in the *Bhagwan Dutt* case¹¹ that the religion-neutral clauses of the public penal laws would apply to Indian people and that personal laws must be ignored in such cases. The uniformity of the penal laws prevents unnecessary ambiguity.

The question of a UCC for India was taken up in the preface of the *Shah Bano Begum* case¹². In essence, this case involved a divorced Muslim woman filing a maintenance complaint against her ex. This was a prime example of conflicts between personal law structures and land-based tribal rules. The court found that the interpretations provided in Muslim personal law textbooks about the obligation to pay and the sum to be paid for maintenance before and after the iddat era were insufficient in this case. The court further emphasised Section 125 of the Code of Criminal Procedure, 1973, which is religion-neutral and unambiguous, and argued that the section's secular existence would circumvent the personal rules. In order to achieve proper national integration, the court has stressed the need for a UCC.¹³

In the *Shah Bano Begum* case, the Supreme Court relied on two main precedents. V.R. Krishna Iyer, J. had previously stated in one of them¹⁴ that religious traditions cannot be protected at the expense of human rights and dignity, and that the civil common code is intended to be a compilation of the best provisions and practices from all systems of personal law.

The researcher observes and opines that the judgment given in the *Shah Bano Begum* case was a reasonable and logical one. It is consistent with the Fundamental Rights to life and dignity therein as provided under Article 21 of the Constitution of India.

The personal rules of any religion cannot be misappropriated to justify the abuse of citizens' fundamental rights. The ruling was not against Muslim personal rules; rather, it highlighted the volatile issues that may arise when public and private laws conflict. The court does not seem to have any intention of undermining the value of Muslim personal laws. However, given the political controversy that the decision generated, the scholar believes that the court should have used more diplomatic words in its proclamation.¹⁵

The court was correct in its stand on the UCC. It is submitted that the Indian economy and the socio-political scenario of India have improved greatly as compared to the 1947. The Indian state could've feasibly adopted a country-wide uniform new statute containing the best provisions of all the religious communities. This would've aided in reducing confusion regarding the personal law disputes.

In the *Sarla Mudgal* case¹⁶, the issue was regarding the marriage provisions in the personal laws. Four petitions were filed in the Supreme Court of India. The first was a collective petition of Sarla Mudgal and Meena Mathur who contended that the latter's husband had converted to Islam for

¹¹ *Bhagwan Dutt v. Smt. Kamala Devi*, (1975) SCR (2) 483

¹² *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2S.C.C. 556

¹³ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2S.C.C. 556.

¹⁴ *Bai Tahira v. Ali Hussain Fissalli Chowthia*, AIR 1979 SC 362

¹⁵ R.G. Mustafi, *Case comment on the Shah Bano Begum case*, 5th VOICE NEWS (Dec. 13, 2020, 08:00 P.M.),

https://5thvoice.news/legalnews_tax_legal/NzAzNg=/Case-comment-on-the-Shah-Bano-case

¹⁶ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531



facilitating a second marriage. The second petition was filed by Fathima for maintenance from her husband who was considering a conversion back to Hinduism after manipulations by his previous wife. The third and fourth petitions were filed by two other women who contended that their respective husbands have converted to Islam for facilitating multiple marriages therein and that the same should be declared void under section 494 of the Indian Penal Code, 1860 which criminalizes bigamy.

The court ruled that a second marriage would contradict the Hindu Marriage Act of 1955's concepts of right, equality, and good faith. Conversion to Islam and subsequent marriage under Islamic law, on the other hand, will not void the marriage under Hindu law, but will be grounds for divorce. The court went on to say that the resulting marriage is invalid and the apostate partner is guilty under section 494 of the Indian Penal Code because of the vocabulary and ingredients of that section. The court also noted that in the Indian legal system, a Uniform Civil Code would prevent people from violating one another's personal rules. The court has ordered the government of India to file an affidavit detailing the measures taken by the government to secure a UCC for Indian citizens.¹⁷

It is opined by the researcher that the aforementioned judgment is reasonable as per the facts and circumstances. Providing the personal laws precedence over the uniform public laws of the land in every situation creates a danger of legal chaos and violation of the uniform constitutional rights guaranteed to the citizens. The uniform public laws were made with an intention of

making them applicable to every section of the Indian society without prejudice and thus, these laws are neutral in nature. The stand of the court on the UCC is also reasonable as the court holds correctly that the UCC will prevent the misuse of some loopholes in the personal law systems. The misappropriation of the loopholes has the potential to defeat the basic tenets and beliefs of any concerned personal law system.

In the John Vallamattom¹⁸ case, the Supreme Court ordered that Section 118 of the Indian Succession Act, 1925, which only applied to Christians, be repealed. This decision said that a Uniform Civil Code for India would avoid absolute misunderstanding and potential discrimination caused by the numerous personal laws that regulate issues such as divorce, partnerships, land succession and inheritance, and so on.

In the *Narasu Appa* case¹⁹, the validity of a statute penalizing the bigamous marriage amongst Hindus was challenged. The court correctly held that the statute was consistent with the provisions of equality and right to life with dignity within the Constitution of India. In addition, the cause of a UCC for India was furthered when the court held in this case that the legislature is empowered to enact laws regarding religion beliefs as long as they don't violate any Fundamental Rights given within the Constitution.

Justice Kuldeep Singh said that Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and similar matters are secular in nature and therefore they can be governed by law.²⁰

¹⁷Shivani Panda, *Bigamy in India: Sarla Mudgal case*, IPLEADERS (Dec. 13, 2020, 09:05 P.M.), <https://blog.ipleaders.in/bigamy-in-india-sarla-mudgal-case/>

¹⁸ John Vallamattom v. Union of India, AIR 2003 SC 2902

¹⁹ State of Bombay v. NarasuAppa, AIR 1952 SC 84

²⁰ Sarla Mudgal v. Union of India, (1995) 3 SCC 635.



In the case of Pragati Varghese v. Cyril George Varghese²¹, the Bombay high court struck down section 10 of Indian divorce act, according to it a Christian wife had to prove adultery or cruelty or desertion to seek divorce. The court held that this provision violates article 21 as it affects the dignity of women.

In the case of Seema v. Ashwani Kumar²², the apex court of the country held that all marriages irrespective of their religion be compulsorily registered. The court felt that this would be the first step towards the implementation of UCC in the country. The court directed the government to come up with rules regarding the consequences of non-registration of marriage. The ruling had various benefits like- prevention of child marriage, a check on bigamy/polygamy by any person, helping women to claim their rights (maintenance, inheritance, custody, etc.).

5. UCC THROUGH THE EYES OF INDIA'S WOMEN MOVEMENT

From a human rights standpoint, there is a compelling need to investigate the question of the UCC and personal legislation. For a long time, both in India and abroad, women's empowerment and violence against women has been a raging human rights problem.

"The Convention on the Elimination of All Forms of Discrimination Against Women" is a one-of-a-kind international treaty that recognizes the need for a special formulation

to confirm, defend, and foster women's human rights. In relation to articles 5(a) and 16(1) of the Conventions, 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." The State is empowered under Article 15(3) of the Constitution to make special arrangements for the protection of women and children.²³

The need for a UCC in India and its effect on the topic of gender justice have been frequently discussed and debated by the Indian women's movement. Women's rights advocates argue that a UCC would not actually guarantee them equal standing with men. The Uniform Civil Code (UCC) is thought to be a Hindu nationalist concept designed to discipline Indian Muslims.²⁴

The above contentions are made on the basis of the fact that all the personal law systems contain aspects that violate the right to equality of the Indian women since the personal laws were established and subsequently interpreted on the grounds of patriarchy. The advocates for a UCC in India have often used the notions of gender equality and national integration. However, in fact, the debates over the Uniform Civil Code have often neglected the living realities and perspectives of various groups of women. Without a social majority, social change was as sharp as a cotton bud.²⁵

²¹ Pragati Varghese v. Cyril George Varghese, AIT 1997 Bom 349.

²² Seema v. Ashwani Kumar, AIR 2006 SCC 471.

²³ Varuna Chakraborty, *Challenging Aspects of Uniform Civil Code in India*, 9 International Journal of Scientific & Engineering Research 1756, 1757 (2018)

²⁴ Nivedita Menon, *It isn't about women*, THE HINDU (May 1, 2021), <https://www.thehindu.com/opinion/lead/It-isn%E2%80%99t-about-women/article14488767.ece>

²⁵ Madhu Kishwar, *Codified Hindu Law: Myth and Reality*, ECONOMIC AND POLITICAL WEEKLY (May 1, 2021), <http://www.economicandpoliticalweekly.org/>



6. THE CHALLENGES IN THE WAY

- India has a peculiar combination and fusion of codified personal rules of Hindus, Christians, Parsis, and, to a degree, Muslim laws. However, there is no single statute of legislature that contains a uniform family law that is recognised by all religious sects and cultures in India. A single system of personal rules would not be acceptable to all individuals and cultures. Different philosophies are at the root of different faith movements' foundations and origins.²⁶
- In India, personal laws discriminate against women in all cultures. While the Shah Bano controversy centred on Muslim personal law, Hindu women have faced a variety of issues under Hindu personal law, as well as in other legal structures. For example, Muslim law recognises paternity and therefore the validity of the child, while other cultures do not. Divorce, marriage, land separation, and remarriage are all places where there are inconsistencies. Many feminists in India have focused on the need to change personal law because of the injustice that it both enacts and promotes. Legislatively, however, very little progress has been made. The latest proposals for a UCC, as well as their contents, seem to be an assault on a specific culture rather than a platform for gender equity.²⁷

- In the lack of clarification about whether both definitions and provisions can be made universal, it is likely that once enacted, more will be converted to the dominant religion. A civil war could erupt across the country due to a muddled Uniform Civil Code and myths regarding a secular state. There is a fear of tyranny on the part of the dominant population against the minorities.²⁸

7. SUGGESTIONS AND CONCLUSION

The current times have been extremely stressful with respect to the tolerance level between the religious communities in India. The recently passed Citizenship Amendment Act, 2019 (hereinafter CAA) and the National Register of Citizens (hereinafter NRC) by the central government has led to heated communal clashes in many parts of India since it is contended that the aforementioned provisions have used religion as an overt criterion for citizenship laws and a subsequent discrimination against Indian Muslims. Lot of other communal tensions have occurred due the Ayodhya Ram Mandir case developments and the insurgency attempts in Kashmir.

In such times, if a UCC is adopted in its present unclear form, it will only add on to the communal tensions and the insecure feelings of the Indian Muslims. However, it is not to be confused with the necessity of a UCC for India. The plurality of personal laws in India does create confusions and challenges the notions of equality and solidarity. But a lot of careful regulation for

²⁶ Dr. JyotikaTeckchandani & Ms. RitikaDhingra, *Uniform Civil Code: Issues and challenges*, 6 Shanlax International Journal of Education 30, 31 (2018)

²⁷ D.C. Manooja, *Uniform Civil Code: A suggestion*, 42 Journal of the Indian Law Institute 448, 456-457 (2000)

²⁸ Dr. DebasisPoddar, *Uniform Civil Codification: Reading the regional context from the prospective text ahead*, 1 ILI Law Review 61, 73-75 (2017)



the same is required. India's ethnic richness is undeniable, but sheer legal plurality is often undesirable. The rules of a UCC cannot be discretionary in certain conditions.

It is necessary to determine what is the driving jurisprudence behind a UCC, whether it is national unity with the maxim "one country, one citizens" or the elimination of gender-based injustices embedded in all personal laws. Both of them are very distinct from each other. Welfare of marginalized sections of society including women has to be given much importance while drafting a UCC.

In light of all the aforementioned suggestions and after focusing on the current communal developments in India, the legislature should take reasonable steps to frame a UCC for India and remove the 'dead letter' status from Article 44 of the Constitution.

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