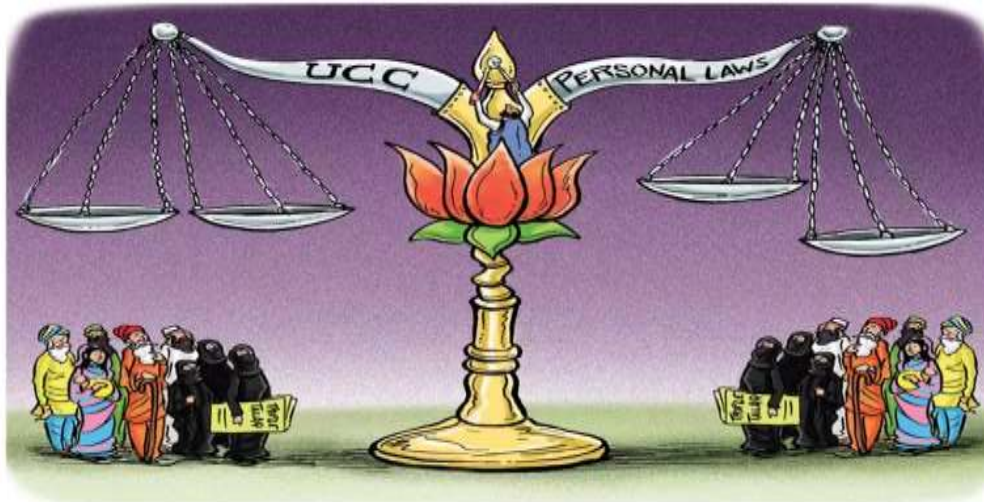




Uniform Civil Code

Sudarshan V. Maniyar

Modern Law College Pune



ABSTRACT

The Indian Constitution created the Directive Principles of State Policy, which function as a set of principles for both the welfare of the people and the policies of the government. These ideas include the establishment of a Uniform Civil Code for the residents of our country. In the 1950s, Dr. B.R. Ambedkar drafted the Hindu Code Bill in an effort to change Hindu law. The Code made divorce lawful, prohibited polygamy, and guaranteed daughters inheritance rights.

When the British entered India, they created and carried out the "Policy of Divide and Rule," which furthered the population's sense of alienation and minority by using religion as a vehicle for division. It was bad for the variety of Indian society, even if it helped the British rule the colony rather well. The same mental process leads to false information on the rule of majority over minority, which impedes the nation's advancement and intellectual development.

In this globalized world, the Uniform Civil Code is critical because if a country has a uniform system of laws governing its citizens, it will prevent disharmony from being caused by the walls of personal legal guidelines and will play an important role in changing the status of women by conferring certain rights with legal backing and proper implementation. The value of the Uniform Civil Code cannot be emphasized. It can only become a reality if the social climate is appropriately created and the public are awakened to accept the change¹.

"Without a Uniform Civil Code, labelling India be Secular nation is just an illusion²"

Key words:- Uniform Civil Code, Hindu Code Bill, Directive Principles of State Policy, Dr. B.R. Ambedkar, inheritance rights, polygamy, divorce, caste system, minority, social climate

INTRODUCTION

The term 'civil code' refers to the entire set of regulations governing property and personal rights, including marriage, adoption, inheritance, and divorce. Different laws control these concerns in different Indian cultures. As a result, Hindu inheritance and divorce rules would be distinct from those of Muslims,

¹ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531

² <https://www.goodreads.com/author/quotes/16121494> last visited on 21.11.2023

Christians, and other comparable religions. The goal for a universal code means condensing all personal standards into a single set of "secular laws." Article 44 of the Indian Constitution aims to provide citizens with a standard civil code across the country³.

Part IV of the Constitution, Articles 36–51, lists the Directive Principles of State Policy. The framers of the Constitution drew this principle from the 1937 Irish Constitution. Dr. B. R. Ambedkar recognized these principles as 'new parts' of the Indian constitution. Granville Austin called the Directive Principles and Fundamental Rights the 'Conscience of the Constitution.'

The directive principles were made non-justiciable and non-enforceable by the architects of the Constitution. Taking a pragmatic approach, the Constitution authors abstained from attaching teeth to these values because they believed more in awakening public opinion than in legal procedures as the ultimate sanction for the implementation of these objectives⁴.

As a result, the founders gave the people the authority to speak up and effect the transition that the people in the society think has happened. Within society, there is a comparable need for the reformation of women's roles. India, a nation with a variety of cultures, is the origin of several personal laws. Personal civil laws often revolve around and have a direct influence on the women who practice that culture; as a result, the status of women is always at the mercy of evolving cultural dynamics, resulting in deterioration of their position.⁵ The Uniform Civil Code will be a powerful weapon with legal consequences for violators. It is difficult to change people's set attitudes in a patriarchal culture like India, and the Civil Code will serve as a catalyst to ease and speed up the process of change in the minds of males in society.

It should also be emphasized that, as ruled by the Supreme Court in *John Vallatattom v. Union of India*, the premises that supports Article 44 are that there is no necessary tie between religion and personal law in civilized society.⁶

ORIGIN OF UNIFORM CIVIL CODE

The UNIFORM CIVIL CODE has its roots in colonial India, where in 1840 the British imposed a uniform law on crimes, evidence, and annexures while purposefully ignoring the personal laws of Muslims and Hindus, leading to a great deal of complexity and inconsistency between the two religions.

The founding fathers of the Indian constitution, including Dr. B.R. Ambedkar, suggested that a Uniform Civil Code be initially included in Article 35 of the Constitution of India, 1949, and that personal laws be kept outside of its purview. He also acknowledged that the implementation of the Uniform Civil Code must be voluntary during the debates held in the Constituent Assembly after India gained independence from the British.

HISTORY & EVOLUTION

The wife was held in high regard throughout the Rig Vedic era, and women's duties were acknowledged, especially in religious ceremonies. While bigamy was frequent, it was restricted to the upper classes, and monogamy was the universally accepted habit. The Rig Veda did not include married daughters, but it did acknowledge the right of daughters to inherit their father's property. The specific rights also imply that the marriage was not a transaction but a holy bond. The women were well-respected members of both their family and the community. It was believed that women were their children's creators, guardians, and teachers.

Over time, women's standing declined both in the household and in society. Women's status and prestige declined as a result of low levels of education and a decline in marriageable age. The land started to be perceived as having an edge over women and gained legitimacy. Feudal society's growth strengthened the idea of property, especially private property.

The presence of Muslims in India during the medieval period limited women's social mobility, and the practice of child marriage spread across the population. Circumstances compelled them to accept their inferiority and second-class position, and they became economically dependent on men.

In the 18th century, the Muslim era was succeeded by the British Raj, which was largely patriarchal. Women's status in India was at an all-time low at the time of their rule. A significant transformation in the status of women occurred when Mahatma Gandhi led the Civil Disobedience cause and the Quit India Movement, in which women played an important role in the Indian national cause. Today though we are in the third decade of the twenty first century, women have not achieved their rights, respect and position they deserve⁷.

According to Swami Vivekananda, "Like a bird can fly in the sky by its two feathers, the society can also run by the same participation of male and female."⁸

³ P.M. Bakshi, *The Constitution of India Seventeenth edition published by Universal Lexis Nexis in 2020*

⁴ Granville Austin, *The Indian Constitution- Cornerstone of a Nation published by Oxford in 1996*

⁵ M.P. Jain, *Indian Constitutional Law Third Edition, published by Wadhwa in 1978*

⁶ AIR 2003 SC 2902; 2003 AIR SCW 3536

⁷ <https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526> last visited on 21.11.2023

⁸ <https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526> last visited on 21.11.2023

BIRTH OF UNIFORM CIVIL CODE IN INDIA

In 1834, India's first law commission was established. It was founded under Section 53 of the Charter Act of 1833, and Lord Macaulay served as its first President. Non-Hindus and non-Muslims residing in presidential territories were subject to separate laws. However, there were no restrictions to safeguard non-Hindus and non-Muslims living in mofussil regions. This caused significant misunderstanding over the application of substantive civil laws to Anglo-Indians, Armenians, and Christians. The commission presented the Lex Loci Report, which suggested adopting substantive English civil law as a single Act. This act was intended to apply to all non-Hindus and non-Muslims residing in Mofussil. As a result, the Uniform Civil Code was established in India.

The Muslim leadership eventually exerted pressure to pass the 1937 Shariat legislation. Under this Act, Islamic laws pertaining to marriage, adoption, divorce, succession and inheritance, and support must apply to all Indian Muslims.

Implementation of the Uniform Civil Code was discussed in the Hindu Law Committee meetings of 1948–1951 and 1951–1954. Dr. B. R. Ambedkar was an ardent supporter of the Uniform Civil Code, feeling that it was the only law that could protect Muslim women, who under Sharia law had little to no protection, and enhance Hindu society. Nevertheless, a watered-down version of the bill was passed in 1956 despite strong resistance. The Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Succession Act of 1956, and the Hindu Minority and Guardianship Act of 1956 comprised the four legislation that made up the Bill.

DEMAND FOR UNIFORM CIVIL CODE

Across the nation, there is a growing movement toward a uniform civil code. It does, however, come with a unique set of myths. The most crucial feature of personal laws is their impenetrability and immunity from judicial review. Because of this, some believe that the Uniform Civil Code is the only option left for eliminating all forms of discrimination in personal laws. In actuality, all laws—criminal, civil, or otherwise—are subject to judicial examination, and the court has the power to declare them possibly unconstitutional if they infringe upon fundamental rights.

The only exception to the current judicial review requirement is that the laws are not codified under Indian law and are derived from another legal system. Understanding Article 13 of the Constitution is critical in this situation. Article 13 of the Indian Constitution defines law and considers it void if it abridges, violates, or contradicts any Part III provision. Surprisingly, in the case of *State of Bombay v. Narasu Appa Mali*, 1952, the High Court ruled that personal laws are not "laws" in the sense of Article 13 and so do not fall under the scope of Fundamental Rights entrenched in Part III (Article 12-35) of the Constitution. What the decision ultimately does is shield personal laws that are arbitrary or violate fundamental rights from judicial review⁹.

The Supreme Court has held the same concept in *Krishna Singh vs Mathura Ahir* in 1980, *Maharshi Avdesh* in 1994, and the *Ahmedabad Women Action Group* in 1997. However, in the case of *Mudaliar*, a three-judge Supreme Court panel ruled in 1996 that personal laws are unconstitutional if they violate basic rights. Still, *Narasu Appa Mali's* decision has not been overturned, and the ghost of *Narasu Appa* lurks¹⁰.

ISSUES SURROUNDING UNIFORM CIVIL CODE

- It is challenging to establish a fundamental set of rituals for every religion due to the diversity of religious beliefs that are founded on such activities. By attempting to implement this policy, the parliament is only duplicating the [western model of law](#),
- The misconception of minorities that Uniform Civil Code will destroy their religious practices and they will be compelled to follow the religious practice of majorities, i.e., Muslims, Sikhs, Christians, Buddhists, Jain, and Zoroastrians,
- The conflict of freedom of religion with equality before law and right to equality,
- The most significant issue is the unawareness of people regarding the objects of Uniform Civil Code, and the reason for such unawareness is the lack of education, fake news, irrational religious beliefs, and etc.¹¹

POSSIBLE SOLUTIONS TO THE ISSUES SURROUNDING UNIFORM CIVIL CODE

No empire is built overnight, and no legal process can be built overnight by simply enacting the pending Uniform Civil Code Bill in India's Parliament. The following are some potential Uniform Civil Code solutions:

- The government of India and people who believe that Uniform Civil Code will infringe their right to religion, both must work in cooperation with each other to upgrade the laws and society. This can be achieved after discussion with people who believe that Uniform Civil Code will violate their right to religion, by surveys, camps, etc,

⁹ *State of Bombay v. Narasu Appa Mali*, 1952 AIR 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 Bom 775

¹⁰ *Krishna Singh v. Mathura Ahir* in 1980 AIR 707 1980 SCR (2) 660

¹¹ <http://164.100.47.4/billtexts/lbilltexts/asintroduced/2649as.pdf> last visited on 22.11.2023

- The government must boost effective awareness about the benefits of Uniform Civil Code among the concerned society,
- To upgrade the established Uniform Civil Code, the government must add new aspects like marriage, divorce, succession, and inheritance, etc in pieces.
- The government must come up with regular meetings with people who are against the implementation of Uniform Civil Code, and look into where the actual problem is lying,
- The Supreme Court of India has referred to [Goa's Uniform Civil Code](#) as a 'Shining Example' due to the features it contains. The Uniform Civil Code in Goa has factors like compulsory marriage registration, prohibition of polygamy or bigamy, uniform age of marriage for men and women, consent of men and women to perform a marriage, consent of both men and women to attain lawful separation, etc. these features can be taken as a ground of implementing Uniform Civil Code at a national level,
- Constituting a high-level committee can be an ideal approach to tackle the problem of implementation of the Uniform Civil Code Bill. The committee must conduct awareness programs and unearth the root cause of the problem¹².

UNIFORM CIVIL CODE BILL AND OBJECTIVES

The Uniform Civil Law of India Bill, 2018 was proposed by the Bharatiya Janata Party in Lok Sabha in 2018 with the aim of enacting a common civil or customary law for all citizens living in India, irrespective of their religion, race or occupation. This is a bill proposed by such as the entire geographical area of India¹³.

- Implementing the right to equality enshrined under Article 14 and the prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth enshrined in Article 15 of the Constitution of India.
- Eliminating personal laws which are established on the foundations of religious beliefs and provide a homogenous structure of laws.
- Abolishing any type of discrimination against women may arise due to the inadequate and dissimilar laws in the Indian legal mechanism.

WHICH LEGISLATIONS ARE DRAFTED TO ATTAIN UNIFORM CIVIL CODE

To attain uniformity in Independent India, Dr. B.R. Ambedkar proposed several amendments to the Hindu personal laws which are known as "Hindu Code Bills". The proposed amendments were intended at providing uniformity in legal provisions to all religions that are not Muslim, Parsi, Jews, and Christians. The Hindu Code Bills legislations which tend to provide Uniform Civil Code includes:

- **Hindu Marriage Act, 1955**
- **Hindu Succession Act, 1956**
- **Hindu Minority and Guardianship Act, 1956**
- **Hindu Adoption and Maintenance Act, 1956**¹⁴

THE JUDICIARY ON UNIFORM CIVIL CODE

In the case of *Sarla Mudgal v. Union of India (1995)*, the Supreme Court of India directed the Ministry of Law and Justice to reflect the steps taken and efforts made, by the Government of India, towards securing a "uniform civil code" for the citizens of India¹⁵.

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors (1985)*, the Supreme Court of India held that Muslim women are entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973 and further ruled that "a uniform civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies" and directed the Government to enact a UCC¹⁶.

In the case of *Pannalal Bansilal Patil v. State of Andhra Pradesh (1996)*, the Supreme Court of India held that "a uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute¹⁷."

In the case of *John Vallamattom and Ors. v. Union of India (2003)*, The Supreme Court of India held that there is no necessary connection between religious and personal law in a civilized society. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be

¹² <https://www.drishitias.com/daily-updates/daily-news-editorials/just-uniform-civil-code> last visited on 22.11.2023

¹³ <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/UCC-Kirodi%2091222-E1213202281611PM.pdf> last visited on 22.11.2023

¹⁴ <https://dalithistorymonth.medium.com/> last visited on 22.11.2023

¹⁵ *Sarla Mudgal v. Union of India* 1995 AIR 1531 1995 SCC (3) 635 JT 1995 (4) 331 1995 SCALE (3)286

¹⁶ *Mohd. Ahmed Khan v. Shah Bano Begum and Ors (1985)*, [1985 (1) SCALE 767 = 1985 (3) SCR 844 = 1985 (2) SCC 556 = AIR 1985 SC 945]

¹⁷ *Pannalal Bansilal Patil v. State of Andhra Pradesh* 1996 AIR 1023, 1996 SCC (2) 498

brought within the guarantee enshrined under Articles 25 and Article 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is suspect.

RECOMMENDATION OF LAW COMMISSION

According to the Law Commission, a Uniform Civil Code is "neither necessary nor desirable at this stage." It believes that prejudice, rather than difference, is at the foundation of inequality. The Government of India 016 tasked the Law Commission with providing a view on UCC, and in its 185-page consultation document, it stated that in order to preserve the nation's cultural and social fabric, we must defend and preserve variety and plurality¹⁸.

CONCLUSION

Moving forward, the government and citizens must realize that law and religion are not two sides of the same coin; they are distinct concepts, and one cannot serve as the foundation or driving force for the other. Social reformation is essential, which can be accomplished by the codification of personal laws, which aids in the fight against the widespread bias in the country. Uniform Civil Code is a vital need of the hour because it will only improve the country's secularism and democracy. Minorities and women have suffered as a result of the lack of Uniform Civil Code, and strengthening these segments of our society is how we can come together as a country.

Uniform Civil Code's principal goal is to achieve gender equality and to put an end to all discriminatory practises in all personal laws. As a result, authorities should ensure that women from all cultures have similar rights in areas of inheritance, child adoption, divorce, and so on. It is necessary to raise social awareness through significant legal revisions, as well as exorcise the ghost of Narasu Appa Mali. These steps will increase the impact and reach of the Uniform Civil Code in India.

BIBLIOGRAPHY

A) Statutes

1. Constitutional Law
2. Indian Penal Code

B) Books

1. Landmarks in Indian Legal & Constitutional History by Sumeet Malik, V.D. Kulshreshtha published by EB Lucknow, Eleventh Edition 2017.
2. P.M. Bakshi, The Constitution of India Seventeenth edition published by Universal Lexis Nexis in 2020.
3. M. Laxmikant, Indian Polity sixth Edition published by Mc Graw Hill Education in 2020.
4. Granville Austin, The Indian Constitution- Cornerstone of a Nation published by Oxford in 1996.
5. M.P. Jain, Indian Constitutional Law Third Edition, published by Wadhwa in 1978.

C) Websites

1. https://www.goodreads.com/author/quotes/16121494.Vikram_Singh_Slathia
2. https://www.researchgate.net/publication/335821723_understanding_uniform_civil_code_and_its_problem_in_implementation.
3. <https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526>.
4. <https://www.drishtias.com/daily-updates/daily-news-editorials/just-uniform-civil-code>.
5. <http://164.100.47.4/billtexts/lsbilltexts/asintroduced/2649as.pdf>.
6. https://blog.ipleaders.in/challenges-of-a-uniform-civil-code_recommendations_of_the_Law_Commissions

¹⁸ https://blog.ipleaders.in/challenges-of-a-uniform-civil-code/#Recommendations_of_the_Law_Commission last visited on 22.11.2023