



Impact of Uniform Civil Code on the Indian Legal System

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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 legal, prohibited polygamy, and guaranteed daughters inheritance rights. Strong public opposition forced the administration to implement a watered-down version of the proposal. It would cover adoption, divorce, marriage, and inheritance under the Uniform Civil Code. India is a multicultural nation with a wide range of religious beliefs. Throughout ancient India, the caste system was used to impose social obligations on people rather than religion.

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 though it helped the British rule the colony quite well. The same mental process gives rise to false information on the rule of majority over minority, which impedes the nation's advancement and intellectual development.

The Uniform Civil Code is vital in today's globalized world because, with a unified set of laws governing its people, it will prevent internal strife stemming from disparate legal systems and will significantly improve women's status by granting them rights that are supported by the law and appropriately enforced. One cannot stress the significance of the Uniform Civil Code. Only until the right social conditions are established and the people are made aware of the need for change can it actually come to pass.

"Calling India a secular nation without a Uniform Civil Code is just an illusion."

Introduction:

The entire body of laws governing property and individual rights, including those pertaining to marriage, adoption, inheritance, and divorce, is referred to as the "civil code." For various communities in India, these matters are governed by distinct laws. Hindu divorce and inheritance laws would therefore be different from those of Muslims, Christians, and other comparable religions. In order to achieve a uniform code, all personal regulations would need to be combined into a single set of "Secular Laws." The goal of Article 44 of the Indian Constitution is to give all citizens of the nation access to a uniform civil code.

Articles 36 through 51 of Part IV of the Constitution list the Directive Principles of State Policy. The 1937 Irish Constitution served as the model for this idea that the drafters of the Constitution used. Dr. B. R. Ambedkar considered these concepts to be "new elements" of the Indian Constitution. The Directive Principles and Fundamental Rights are known as the "Conscience of the Constitution," according to Granville Austin.

Landmarks in Indian Legal & Constitutional History, by Sumeet Malik & V.D. Kulshreshtha's published by EB Lucknow, Eleventh Edition 2017.

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

¹<https://www.goodreads.com/author/quotes/16121494> last visited on 24.04.2024

¹*P.M. Bakshi, The Constitution of India Seventeenth edition published by Universal Lexis Nexis in 2020*

¹*M. Laxmikant, Indian Polity sixth Edition published by Mc Graw Hill Education in 2020*

The designers of the Constitution intended for the directive principles to be neither enforceable nor subject to court challenge. The writers of the Constitution took a practical stance and refrained from giving these ideals legal force because they saw popular opinion as the final sanction for achieving these goals, rather than going through the legal system.

The founders thus gave the people the power to express ideas that lead to the change that the members of the society perceive to have taken place. There is a similar call throughout society for women's roles to be reorganized. India is a culturally diverse nation that gave rise to a number of personal laws.

Personal civil laws generally center around and directly affect women who follow that culture; hence, women's standing is always vulnerable to changing societal dynamics, which deteriorates their situation.

The Uniform Civil Code will be a powerful instrument with consequences for breaking it legally. India is a patriarchal nation where it is hard to break people's set attitudes. The Civil Code will act as a catalyst to ease and expedite the process of changing men's perspectives within the community.

It should be emphasized that the underlying premises of Article 44 are that there is no necessary relationship between religion and personal law in civilized society, as declared by the Supreme Court in *John Vallatamattom v. Union of India*.

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 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 during 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 recognize 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.

Women's status worsened with time, not only in society but also within the family. The lack of education and the fall in the age of marriage had a negative influence, decreasing the position and prestige of women. The land began to gain credibility and was seen to have an advantage over women. The development of feudal society reinforced the concept of property, particularly private property.

¹ *Granville Austin, The Indian Constitution- Cornerstone of a Nation published by Oxford in 1996*

¹ *M.P. Jain, Indian Constitutional Law Third Edition, published by Wadhwa in 1978*

¹ *AIR 2003 SC 2902: 2003 AIR SCW 3536*

¹ https://www.researchgate.net/publication/335821723_Understanding_Uniform_Civil_Code_and_its_problem_in_implementation_last_visited_on_24.04.2024

When Muslims arrived in medieval India, women's social mobility was curtailed and the practice of underage marriage spread throughout the society. They had no choice but to accept their inferiority and status as second-class people due to the circumstances, which made them financially dependent on men.

The Muslim era was replaced in the eighteenth century by the predominantly patriarchal British Raj. During their reign, women's standing in India was at an all-time low.

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 deserve.

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."

BIRTH OF UNIFORM CIVIL CODE IN INDIA

India's first law commission was established in 1834. It was founded with Lord Macaulay serving as its first President in accordance with Section 53 of the Charter Act of 1833. Residents in presidential areas who were not Muslims or Hindus were governed by separate laws. Nevertheless, non-Muslims and non-Hindus residing in mofussil regions were not covered by any laws. This led to a great deal of misunderstanding on how Anglo-Indians, Armenians, and Christians were to be treated under substantive civil laws. The commission's *Lex Loci* Report, which called for the adoption of a unified

Act establishing substantive English civil law, was submitted. This act was intended to cover all non-Muslim and non-Hindu residents of Mofussil. Uniform Civil Code was established in India as a result.

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

The Hindu Law Committee's 1948–1951 and 1951–1954 sessions marked the start of talks over the Uniform Civil Code's implementation. A strong supporter of the Uniform Civil Code, Dr. B. R. Ambedkar thought that it was the only way to advance Hindu civilization and protect Muslim women, who are mostly unprotected under Sharia law. Nevertheless, a watered-down version of the bill was passed in 1956 despite strong opposition. 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

A Uniform Civil Code is becoming increasingly popular across the country. However, it comes with its own set of misconceptions. The most important aspect of personal laws is that they are impregnable and not subject to judicial examination. As a result, individuals consider that Uniform Civil Code is the only remaining alternative for filtering out all discriminatory practices in personal laws. The truth is that all laws, whether personal, criminal, or financial, are judicially reviewable, and the judiciary has the authority to declare them potentially void if they violate Fundamental Rights.

¹<https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526> last visited on 24.04.2024.

¹ <https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526> last visited on 21.11.2023

¹<https://blog.ipleaders.in/challenges-of-a-uniform-civil-code/> last visited on 24.04.2024

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. NarasuAppa 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 review². 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 *NarasuAppa* lurks³.

ISSUES SURROUNDING UNIFORM CIVIL CODE

- Different religions having different religious faiths which are based on the basic practices of the religion causes difficulty in implementing a basic platform of practices for every religion,
- 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, etc⁴.

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:

²*State of Bombay v. NarasuAppa Mali*, 1952 AIR 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 Bom 775

³*Krishna Singh v. Mathura Ahir* in 1980 AIR 707 1980 SCR (2) 660

⁴ <http://164.100.47.4/billtexts/lsbilltexts/asintroduced/2649as.pdf> last visited on 22.11.2023

- 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,
- 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 problem⁵.

UNIFORM CIVIL CODE BILL AND OBJECTIVES

The Uniform Civil Law of India Bill, 2018 was proposed by the BharatiyaJanata 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 India⁶.

- 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, 1956⁷**

THE JUDICIARY ON UNIFORM CIVIL CODE

¹ <https://www.drishtias.com/daily-updates/daily-news-editorials/just-uniform-civil-code> last visited on 24.04.2024

¹ <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/UCC-Kirodi%2091222-E1213202281611PM.pdf> last visited on 24.04.2024

¹ <https://dalithistorymonth.medium.com/> last visited on 24.04.2024

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 India⁸.

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 UCC⁹.

⁵ <https://www.drishtias.com/daily-updates/daily-news-editorials/just-uniform-civil-code> last visited on 22.11.2023

⁶ <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/UCC-Kirodi%2091222-E1213202281611PM.pdf> last visited on 22.11.2023

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 acute¹⁰.”

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 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 plurality¹¹.

Impact Of Uniform Civil Code on India

1. **Social Equality:** Regardless of a person's religion, a UCC seeks to give all citizens access to a shared set of laws addressing personal issues including marriage, divorce, inheritance, and adoption. By getting rid of discriminatory behaviors ingrained in personal laws based on religion, this could advance social equality.
2. **Women's Rights:** Protecting women's rights and advancing gender equality are two of the UCC's main goals. Uniform laws may shield women from discriminatory practices seen in some personal laws, such as uneven inheritance rights, polygamy, and unilateral divorce.
3. **Legal Simplifying:** At the moment, India has various personal laws for various religious communities, which causes confusion and complexity in the legal system. By substituting a single, consistent set of rules for several personal laws, the implementation of a UCC would streamline the legal system and improve accessibility and comprehension of legal processes for all citizens.
4. **Secularism:** Many people believe that establishing a UCC will help realise the secular principles contained in the Indian Constitution. The UCC would support the equitable treatment of all citizens regardless of their faith and strengthen the secular nature of the state by making sure that legislation are not based on religious concerns.
5. **Opposition and Difficulties:** There are difficulties in implementing a UCC in a pluralistic and diverse country like as India. Religious organizations that feel that it is an invasion of their customs and personal space can object. The implementation of a UCC may also be hampered by political concerns and the need to strike a compromise between conflicting interests.
6. **Unity and Integration:** Advocates contend that a UCC would promote a sense of common citizenship based on shared rights and obligations, so bridging religious barriers and fostering national unity and integration.
7. **law Reforms:** Drafting a UCC would necessitate significant law changes as well as stakeholder discussions. It might offer a chance to amend antiquated and discriminatory legislation and guarantee that the judicial system is in line with modern justice concepts and ideals.

CONCLUSION

Law and religion are two different ideas that cannot be the basis or inspiration for the other. This is something that both the government and the people must understand going forward. Codification of personal rules is one way to achieve social reformation, which is necessary to combat the pervasive bias in the nation. A uniform civil code is urgently needed since it will strengthen the nation's democracy and secularism. The absence of a Uniform Civil Code has caused hardship for women and minorities, and fostering these facets of our society is essential to our national unity.

The main objectives of the Uniform Civil Code are gender equality and the abolition of all forms of discrimination in individual legislation. Authorities should thus make sure that women have equal rights in all contexts, including inheritance, child adoption, divorce, and other sectors. It is imperative to both banish the spirit of *Narasu Appa Mali* and increase public awareness through meaningful legal changes. By taking these actions, the Uniform Civil Code's influence and reach will grow in India.

¹*SarlaMudgal v. Union of India 1995 AIR 1531 1995 SCC (3) 635 JT 1995 (4) 331 1995 SCALE (3)286*

¹*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]*

¹*PannalalBansilalPatil v. State of Andhra Pradesh 1996 AIR 1023, 1996 SCC (2) 498*

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