

# UNIFORM CIVIL CODE

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**Abstract:** This paper basically addresses the concept of the Uniform Civil Code (UCC) and its legal aspects. The fundamental essence of the Uniform Civil Code has been examined in this study, including what it means as well as its legal perspective and ideas. This paper commences with an introduction to the Uniform Civil Code, in which it describes the concept of the Uniform Civil Code, discusses its roots or where it has evolved from, and also analyzes whether the Uniform Civil Code should be implemented and what the advantages and disadvantages of the same are. Further, we will talk about the relationship between the Uniform Civil Code and secularism in this paper, as well as how the implementation of the UCC may cause the country to fall apart, which will erode the nation's ability to maintain peace and harmony among its citizens. The paper also discusses the opinions and position of the Indian judicial system about the Uniform Civil Code. Last but not least, this paper concludes with some sets of conclusions and recommendations. Many journals, books, and articles were consulted and taken into account when writing this study. The internet has also helped with this process.

**Keywords:** Uniform Civil Code (UCC), Personal laws, Religions, Constitution, Article-44, Supreme court, IPC, CrPC, Evidence, Morality, Social Injustice.

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## 1. INTRODUCTION

India has always been called a land of diversities and why won't be called so after all, in the 42nd amendment the word 'secular' has been added in our preamble which marks cultural diversity within Indian society. Hindu, Muslim, Sikh, Christian, Jain etc. collectively forms India and share cultural heritage. At this point we need to understand that secularity also means that individuals will have their own religion affiliation and cultural differences from one another. Although India have several public laws such as IPC, CrPC, CPC, EA etc. which have their application similar on each and every Individual, there are personal laws which differs from person to person based on their religion such as Hindu has Hindu Marriage Act 1956, Muslims have Muslim Marriage Act based on Islamic law and etc. not only this our constitution has also provided protection to each religion to abide by their respective religious ethics under **Article 25-28 of Indian constitution**

which indeed brings harmony in our citizen by giving them freedom to choose the religion they wants to follow but sometimes it brings rise to the discriminatory ideologies as some religions don't give any right to women's. Here, the idea of implication of uniform personal law comes to the

picture so that everyone irrespective of their religious differences may seek benefit of a common civil law of society.

The uniform civil code refers to the idea of enacting a common set of civil law for all citizens of India, regardless to their religious affiliations. **The concept is mentioned in Article 44 of Our constitution<sup>1</sup>**, which states that the state shall strive to secure a uniform civil code for its citizens. Proponents of UCC argues that implementation of UCC on diverse religious community will infringe their right to practice religion freely as personal law are integral part of it through this paper, we intend to approach UCC as a need of modern Indian society with careful consideration and consensus building among various religious and social group in India.

### ***1.1. Objective of implementing Uniform civil Code in India***

Ever since the idea of implementing a common code of civil laws is uprising in India UCC has become a topic of debate and discussion and just because of that everyone is talking about how it will change their way of living and way of preserving their cultural with respect to their religious attributes. But people need to understand that. The UCC aims to promote national integration and secularism by eradicating discrimination against women in

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<sup>1</sup> ***The state shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India.***

personal laws and offering equal rights and positions for men and women. By simplifying the complexity of personal laws, and promoting public access to the law, the UCC aims to reform ineffective and regressive practices like triple talaq, polygamy, and child marriage while considering current realities and preferences.

## 2. RESEARCH METHODOLOGY

Diving further deep in the idea of establishing Uniform Civil Code in the society, this research paper tries to explain its reader that, it is crucial to pass legislation implementing a Uniform Civil Code in an age where citizens' rights are of utmost importance and the generally accepted point of view is to advance toward a society that safeguards human rights no matter what caste, religion, region, or gender. And, how it is put into practice and how it will fit into our society becomes extremely crucial.

### 2.1. Historical cases on Uniform Civil Code

The Uniform Civil Code (UCC) is a legal concept that aims to replace personal laws based on religion or community with a common set of civil laws for all citizens. It's been a topic of debate and discussion in countries with diverse religious and cultural backgrounds. Its history dates back to colonial India when discussions on implementing a uniform legal framework began. You can explore the historical context, debates, and developments over the years, including its mention in the Indian Constitution's Directive Principles of State Policy. Additionally, consider examining the perspectives of different stakeholders and the challenges in implementing a UCC.

#### 2.1.1. Shah Bano Case

The Shah Bano case, also known as *Mohammad Ahmed Khan v. Shah Bano Begum, 1985*.<sup>2</sup> It is the most important case with respect to the idea of implementation of Uniform Civil Code in India. In this case Shah Bano Begum after 40yrs of marriage and after 5 children was divorced. After divorce Shah Bano Begum Sued her husband for claiming maintenance under section 125 of CrPC. Against which her husband file an appeal in the supreme court. At that point, section 125 of CrPC provided that every married woman is entitled to receive

maintenance from her former husband after divorce. In its appeal Mohammad Ahmed Khan argued that he is a Muslim and according to his religion he is bound to maintain her wife only up to 3 months. Now the situation arises that whether maintenance should be given according to the Muslim personal law or according to the Indian Public Law.

The 5 Judges bench of supreme court clearly stated that even Muslim women are entitled to get protection under section 125 of CrPC and religion is not a hurdle in section 125 as it is applicable equally to all the religion doesn't matter whether the person is Hindu, Muslim, Sikh, Christian or any other religion. And given statement on Article 44 that if Uniform Civil Code Will Implement in India, then it will work in national Integration and will provide better solution in the times of conflicting ideologies.

Despite being praised to be such a progressive judgement It was criticized by the whole Muslim Community and their judgement was overturned by the government of Rajiv Gandhi by passing the Muslim Women (protection on divorce Act)1986.

#### 2.1.2. Sarla Mudgal vs Union of India, 1995<sup>3</sup>

In this case Sarala Mudgal was a president of a NGO called Kalyani along with Meena Mathur were petitioner in this case. In 1988, Meena married to Jitendra Mathur and Meena found that the Jitendra had converted to Islam and solemnized a second marriage with Sunita Narula also known as Fathima

Meena complained against her husband in the section 494 of IPC which provides that no one can marry again as long as their previous spouse are alive, Meena then convinced Jitendra that she and their son needs Jitendra and then he again converted to Hindu. Supreme court held that conversion of religion by a person in order to get marry to solemnize the second marriage is not correct. Muslim according to their personal law are allowed to get marry 4 wives whereas Hindu can marry only one wife if any person in order to seek advantage of personal law of any religion convert his/her religion is not right. SC also stated that government also take steps to implement UCC in order to remove the immoral advantage of personal law.

#### 2.1.3. Daniel Latifi V. Union of India, 2001<sup>4</sup>

In this case the Muslim Women's Act (MWA) was contested on the grounds that it infringed on both the right to life under Article 21 and the rights to equality under Articles 14 and 15. The Supreme Court upheld the law's constitutionality, harmonized it with section

<sup>2</sup> 1985 SC 945

<sup>3</sup> 1995 SCC (3) 635

<sup>4</sup> Writ Petition (civil) 868 of 1986

125 of the Criminal Procedure Code, and ruled that a wife's iddat payment must be sufficient to support her both now and in the future. A Muslim woman who has been divorced is therefore entitled to support for life, or until she marries again, under the laws of the country.

#### **2.1.4. John Vallamattom and another V. Union of India<sup>5</sup>**

In this case, a priest from Kerala named John Vallamattom questioned whether Section 118 of the Indian Succession Act, which applies to non-Hindus in India, is constitutionally lawful. Mr. Vallamattom argued that Section 118 of the Act discriminates against Christians by placing excessive limitations on their ability to leave property to charity or for religious purposes. The court held that the clause was invalid.

#### **2.1.5. Shayara Bano V. Union of India, 2017<sup>6</sup>**

Another important judgement is Shayara Bano's which is also called 'Triple Talaq Judgement'. In this case shayara Bano's husband pronounced triple talaq and divorced her against which she filed a writ petition in the supreme court and challenged three practices of Muslim law which were Nikah Halala, polygamy and Talaq-e-biddat she argued that merely by pronouncing words divorcing a women is a inequitable and unfair practice which must be turn down from our society against which "All India Muslim Personal Law Board" argued that this practice are purely based on their personal law which is based on their scriptures and stated that since the Muslim personal law is not codified it must be granted protection under Article 25 which provides "Freedom of conscience and free profession practice and propagation of religion" SC by 3:2 majority held that practice of Talaq-e-biddat Unconstitutional stating that it is not an essential religious practice nor it is reasonable on Muslim women's.

**2.2. Implementing a uniform civil code in India is a complex task due to various political, social, and cultural considerations. Some potential political challenges or "loopholes" that may hinder its implementation include:**

#### **2.2.1. Religious and Cultural Sensitivities:**

India is a diverse country with a multitude of religions and cultures. Implementing a uniform civil code could face resistance from religious groups that view personal laws as integral to their identity and traditions.

<sup>5</sup> Writ Petition (civil) 242 of 1997

#### **2.2.2. Minority Rights:**

Concerns about minority rights and the fear of cultural assimilation can lead to resistance from certain communities who believe that a uniform civil code might disproportionately affect their way of life.

#### **2.2.3. Political Opposition:**

Different political parties have diverse agendas, and some may oppose the uniform civil code as a way to appeal to specific voter bases or preserve their own ideological positions.

#### **2.2.4. Constitutional Protections:**

The Indian Constitution allows for personal laws based on religion and grants citizens the right to religious freedom. Changing or replacing these laws would require careful consideration and potential amendments to the Constitution.

#### **2.2.5. Gender Equality:**

While proponents argue that a uniform civil code could promote gender equality by addressing discriminatory practices in personal laws, opponents may claim that certain communities might perceive this as interference in their religious affairs.

#### **2.2.6. Public Perception:**

Public perception plays a significant role in policy implementation. If there's a widespread belief that the uniform civil code undermines cultural and religious diversity, it could impact the political will to push for its implementation.

#### **2.2.7. Legal and Administrative Challenges:**

Developing a comprehensive set of laws that accommodates diverse religious and cultural practices while ensuring equity and justice for all citizens is a complex legal and administrative task.

#### **2.2.8. Consensus Building:**

Achieving consensus among various religious and cultural groups, as well as political parties, on the content and scope of the uniform civil code is a significant challenge.

#### **2.2.9. Social Backlash:**

There could be social backlash if the implementation is perceived as imposing a particular cultural or religious perspective on the entire population.

<sup>6</sup> AIR 2017 9 SCC 1 (SC)

### **2.2.10. Time and Resources:**

The process of drafting, debating, and implementing a uniform civil code requires substantial time, resources, and cooperation from various stakeholders.

Given these challenges, any attempt to implement a uniform civil code in India would need careful negotiation, dialogue, and consideration of the diverse perspectives and concerns of the population.

## **3. PROBLEMS**

So, till now we have read that UCC is an idea of establishing national integrity and a harmonious society in India by eliminating the restrictions of cultural loopholes then what's stopping us to implement such a progressive law, is it the well-being of India mandates towards our Indian culture or is it a political agenda of opposition party. This thing to be understood that India is a country of cultural heritage and social diversity, here different norms and beliefs are followed by different people and in their different way. At this point we need to understand that despite UCC being a part of our Indian constitution most of the Indian citizen are unaware about the utility of UCC which is also a reason why it is important to have a proper and effective way to implement UCC.

The citizen lack of knowledge towards UCC is it what's make the bad public perception for unification of personal laws. People believe that UCC may become a hurdle for them in following the teaching of their respective religion which is certainly the teaching of their respective religion which is certainly a wrong perception. Since UCC doesn't seeks to disturb or rupture the teachings of any religion but it aims to eliminate only those practices which are inhuman derogatory and unfair in nature but the critics of UCC are not trying to understand the essence of it

They believe it as an act of ruling party against the teaching of their religion. Some of the people has made it a debate between Hindu and Muslim as it is an act of Hindu to deny the teaching of Islam and some of them are even calling it as Hindu civil code which is the mindset, needed to be changed.

## **4. DISCUSSION**

Considering all the following studies we can comes to an understanding that there are some of the religious practices in our culture which are unfair and are unnecessary for our society which are needed to be removed. But the question here arises that why do

we need this UCC now? what has changed from the past scenario?

At this point we know that SC has already given statements on the requirement of having a common civil law in India yet it doesn't change the fact that SC has no authority to implement UCC. Even SC has also stated that SC is not the right forum to pass UCC and this authority lies in the hand of parliament and now our current prime minister, Mr. Narendra Modi has taken a step forward in this regard by proposing to have a common civil code in India. So far, we know that UCC has always been a part of our constitution as a directive principles of state policy mentioned in Article 44 and ever since it is included in Part IV of our constitution, it is not justiciable which means they cannot be enforce by the court of law. Yet DPSP were meant to be enforce by the passage of time when our country is having sufficient means of maintaining them and considering the current growth and need of our country, we are ready to give ourself a UCC. In these regards the 22-law commission of India has also asked for views and ideas on UCC from public and religious organizations.

It is shown in the report that mainly the north eastern states of India are opposing the idea of UCC because of the reason of their traditional culture which they fear to be perish by implication of UCC.

State Nagaland has also requested the law commission to exempt it from purview of UCC talking base that they are already immune from all parliament laws under Article 37(A) of Indian constitution.

Besides this most of the states are ready to have a common civil law. The only state in India that has already implemented a UCC is Goa. The Goa civil code was enacted in 1961 and it applies to all citizen of Goa regardless of their religion, including matter of marriage, inheritance, divorce and adoption. In India citizens are closely concerned to hold their religious teachings where there is a huge mass of people that neither hold back to safeguard their culture nor hold back to dent the teachings of other religion and turn every progressive idea into a Hindu Muslim dispute.

In such a situation, any step that may affect religious beliefs of citizens can cause religious war in our country, 2023 Haryana riots, 2023 Ranchi violence, 2022 Kanpur violence are some of its examples.

## **5. CONCLUSION**

Uniform Civil Code is not just a governmental scheme but it is noble idea to create a harmonious

environment between different religions and to uphold the integrity of our nation. It is a path towards prosperity of our country not by disrespecting our religions but by extracting those unfair practices which are unnecessary to be followed in our modern society. The essence of this paper is to signify that indeed UCC is a step forward actual social justice of our citizens and rather than merely a matter of debate and dispute between politician and religions, it shall be acting to confer equality to our citizens but whether it becomes successful or not, either way it will totally depends on the way it will be introduced in our society.

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