

Uniform Civil Code: A Constitutional and Social Insight

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Abstract

This article explores the concept of the Uniform Civil Code (UCC) in India from various perspectives. It begins by emphasizing India's secular nature and its treatment of all religions equally. The role of religion in Indian society is discussed, highlighting the influence of different religions on personal laws governing family affairs. The complexity of applying different laws to different religious groups is acknowledged, leading to challenges in the distribution of justice. The constitutional perspective examines the preamble and its aim of establishing a welfare state. The UCC is positioned as a secular law that promotes equality and unity among citizens, irrespective of their religious backgrounds. The inclusion of Article 44 in the Indian Constitution, which calls for a uniform civil code, is discussed, along with its intention to integrate diverse communities and promote national unity. The conflict between fundamental rights and directive principles is explored, emphasizing that the UCC does not infringe upon guaranteed fundamental rights. Instead, it aims to protect women from discrimination and establish parity between laws for men and women. The societal perspective addresses arguments against the UCC based on multiculturalism, secularism, and democracy. It asserts that cultural diversity should not justify religious-based personal laws that hinder progress and equality. The UCC is shown to be compatible with the principles of secularism and democracy. The judicial perspective is examined, highlighting the judiciary's role in advocating for the UCC and shaping society through landmark judgments. The Shah Bano case, which addressed conflicts between personal and unified procedural laws, is discussed as a starting point for analyzing the need for a uniform civil code. Overall, the paper presents a comprehensive analysis of the UCC in India, considering its implications from legal, constitutional, societal, and judicial perspectives. It underscores the importance of a uniform civil code in promoting equality, secularism, and national unity while addressing challenges posed by diverse religious beliefs and practices.

Keywords: Constitutional perspective, democracy, secularism, societal perspective, uniform civil code

INTRODUCTION

“Secularism is a religion, a religion that is understood. It has no mysteries, no mumblings, no priests, no ceremonies, no falsehoods, no miracles, and no persecutions.”

—Robert Green Ingersoll

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India has been a land of diverse and multiple cultures for ages. The beauty of our country gets its essence from the diversity of religions followed in our country. Due to its secular nature, India treats all religions equally, without discrimination [1]. The state can independently take decisions in favor of the nation, irrespective of any religion. State interference with religious matters is forbidden so long as it does not impair the state's effectiveness.

In the Indian tradition, religion plays an integral role. It plays a vital role in regulating the behavior of men and women. People treat their religion as a part of their lives. Social groups following different religions have different ideologies. Religion not only influences people but also affects their ideologies. Religion is affecting people's cultural and civil lives ranging from marriage to inheritance. Therefore, Indian law is subject to discrimination among diverse religions. Separate personal laws tend to govern family affairs because every religious group has different beliefs, customs, and practices. Beliefs and practices of one religion may mean something else to another religion. The peaceful running of society thus, demands diverse personal laws. It leads to different treatment of different classes of people for their personal laws. The difference in situations makes the application of laws complex.

This complexity leads to difficulty in the distribution of justice. In the case of disputes, the very foundation of the diverse Indian culture, the religion, has had an enormous effect on Indian society. The universal civil code must be analyzed in this diverse context.

The preamble is the essence of the Constitution [2]. The framers of the supreme law of the land aimed at establishing a welfare state. It contains provisions in light of the preamble. The UCC is wrongly recognized as the replica of secularism, but it is truly not.

According to Granville Austin, "*The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. However, the core of the commitment to this revolution lies in parts III and IV of the Indian Constitution, i.e., the Fundamental Rights and the Directive Principles of State Policy* [3]."

WHAT IS THE UNIFORM CIVIL CODE?

The uniform civil code (UCC) is a component of the guiding principles of the government's strategy that are enshrined in the Indian Constitution. Article 44 under Part IV of the Constitution states: "*The State shall endeavor to secure for the citizens, a uniform civil code throughout the territory of India*".

The word 'shall' imposes a constitutional mandate on the state to ensure uniformity in the implementation of civil laws. The issue arises only due to the legal nature of the directives, that these principles, though fundamental in the governance of the country, are unenforceable by any court of law.

These non-judicial rights pertain to a person's family life and signify that all citizens, regardless of their religion, caste, or tribe, are subject to the same laws. The intention of the framers, behind incorporating the said article was to integrate the diverse communities, and cultures, and thus, follow the principle of "single law, single nation" which is the true essence of every religion.

The UCC is a secular law in the true sense since it is a common law for every religion above personal laws, which are applicable to all citizens equally regardless of their religion, ensuring the right to equality guaranteed to any person by the Constitution of India.

Around the turn of the 20th century, the demand for the protection of women's rights, equality, and secularism gave rise to the UCC movement. India is a state of diverse cultures; hence a contrasting system of personal laws prevails in its society. Personal laws were first framed during the British Raj because they considered interference in religious matters not at all constructive to their friendly trade.

Codification of laws strives hard to ensure and achieve certainty and uniformity. It was done with the active assistance of known scholars in the communities. Later, the question regarding the place of UCC as a codified law found its way when the imagination for a free India was forged in the debates in the constituent assembly. After receiving guarantees from Nehru and Gandhi that the enactment of the UCC would be delayed due to objections that surfaced at the time but that it would remain a state aspiration, Article 35 from the draft was finally added as Article 44 in the final Constitution.

Since then, it has been a debatable question of law that still persists in society with the diverse views of people of different religions. People believe that religion is their way of life, and their behavior is based on the religion they follow. Therefore, the UCC has been facing constant opposition whenever a step has been taken toward bringing a set of uniform civil laws in one way or another. A few legal changes were made before India gained its independence to better the situation of women; one of these is the Dissolution of Muslim Marriage Act of 1939. During the first ten years of India's independence, the Hindu Code Bill was passed, but traditional Hindus fiercely opposed it. It was the first democratic state's initial significant movement. The following laws are examples of the areas in which significant efforts by the legislature continue to be made in support of a common civil code and national unity:

- Special Marriage Act, 1954
- The Hindu Code, 1955–56
- Dowry Prohibition Act, 1961

Constitutional Perspective

The Preamble, which was added to the Constitution (42nd Amendment) Act of 1976, declares the state of India to be secular, which is its fundamental feature. The Supreme Court also held in the case of *S.R. Bommai v. Union of India* [4] secularism as the basic structure of the Constitution. A uniform civil code attempts to bring uniformity to the differences in personal laws governing marriage, divorce, inheritance, adoption, and maintenance, and protects the secular nature of the state, by not imposing a particular state religion.

The uniform civil code falls well within the purview of constitutional morality since it intends uniformity of law, prohibits discrimination, which is also one of the fundamental rights under Article 15 of the Constitution of India and supports reform and social welfare, which is the basic principle of directive principle of state policy, the presence of which under Article 44 makes it evidentiary.

The uniform civil code is not defined in the Constitution, but is stated under Article 44 of the Constitution of India. "The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India [5]." The intent behind inserting a uniform civil code in the constitution is well explained by KM Munshi in the Constituent Assembly debates. Emphasizing the necessity of uniform laws for governing issues relating to marriage, divorce, inheritance, maintenance, and adoption, he says that "*Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified, and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country* [6]."

The idea of uniformity in the nation by reducing the disparity between the laws that govern different groups of the nation is well put forth by the Vice President of the Constituent Assembly. He explained, "*The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different people of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters* [7]."

STRIFE BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The constitutional obstacle that is created by the various communities, is the infringement of their fundamental rights and the threat to secularism. "*The unity and fraternity of the people of India, professing numerous faiths, has been sought to be achieved by enshrining the ideal of a 'secular state', which means that the state protects all religions equally and does not itself uphold any religion as the state religion* [8]."

Articles 25–28 of Part III of the Constitution of India, which are the fundamental rights, ensure the secular nature of the state, by guaranteeing the right to freedom of religion, which is not absolute and

subject to certain restrictions. As stated in Article 25(2)(b) of the Constitution of India, “Nothing in this article shall affect the operation of any existing law or prevent the state from making any law, providing for social welfare and reform,” and the uniform civil code is constitutionally valid.

Article 44 in no manner infringes on the guaranteed fundamental rights, as the implication of a uniform civil code does not mean imposing a state religion; it is more concerned with the unification of laws. The civil code is rather elevating fundamental rights by protecting women from the discrimination that they face due to several personal laws; the uniform civil code aims to end that discrimination and bring parity between the laws for men and women. Many feel that the “*personal law of inheritance, succession, etc. is a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a fundamental right to that effect and you have an article here that lays down that there should be no discrimination against sex. Therefore, there is no reason why there should not be a civil code throughout the territory of India* [9]”. The Hon’ble President of the Constituent Assembly debate, Dr. BR Ambedkar, ponders upon the fact as to why, when the penal laws, property law, and other civil matters can have a unified law, then why has not the state been able to invade so far in bringing unification to the law in the realm of marriage and succession. He vehemently suggests a uniform civil code as a result [10].

Societal Perspective

India’s readiness for a unified system of civil law has once again been questioned, this time in light of the Constitution’s 72-year existence. The uniform civil code is one of India’s most innovative pieces of legislation. But, the importance and benefits of UCC have been eclipsed by the strong opposition of minorities and the conservative members of society. Every time UCC is brought to light, a web of intricate justifications is launched to excuse the lack of vision and will on the part of some political classes. Society joins hands to extend this argument further and conceal the regressive agenda of scuttling UCC in the name of religion.

If we deeply examine the soundness of the arguments prevailing in society, they are found to have been primarily based on the three foundations of multiculturalism, secularism, and democracy.

Multiculturalism is a situation where more than one stream of culture exists in society. The state must frame policies to maintain and promote this diversity. It must not intrude only into the cultural realms of a particular minority community. Without outside interference, all communities, majority or minority, are free to control their social and cultural aspects. But it is unacceptable for them to abuse their rights in the name of being a minority. Religiously based personal laws cannot be justified by cultural diversity. Cultures promoting rights such as the right of women to vote, the right of women to equal wages, and the right of women to an equal share of property are not just different but better than cultures which do not have them. Society must ensure the presence of equality of people without distinction of caste, class, race, or gender, and consider the further scope that exists in the evolution of the culture.

Culture is something we inherit; it must be treasured, but surely not at the cost of the development of a progressive society. Society is dynamic, and so should the law.

Secularism is the second important foundation. A secular state is one in which the government is forbidden from meddling in the religious affairs of various communities. In India, criminal and civil laws are governed by a common code of law that is independent of religion. Personal laws, however, have the problem of discrepancies and differences within them. Religion establishes a person’s way of life; people identify themselves with their religion rather than realizing that religion was created by humans, not the other way around. They fail to realize the real essence of any religion is that they all are one. It is never the religion that divides them, it is the individual himself who finds himself different from the others.

A citizen's freedom of conscience remains the right to shape his own relationship with God however he wants. Due to their belief that it restricts their freedom of choice, the UCC has opposed it strongly because it violates Article 25 of the Constitution.

It has been so successful that it has obscured the fact that the UCC is a "Civil Code" and not a religious code [11]. It is high time that the people need to realize that the "civil" in the UCC indicates that it does not include what is demarcated by the expression "matters of religion". Contrary to what is being claimed, UCC does not advocate religious uniformity or the exclusion of all faiths other than Hinduism [12].

In no way does secularism lead to various religion-based personal laws that frequently use religion as a defense and are therefore impervious to any form of logical analysis. Secularism is just another principle that justifies constitutional morality by ensuring equality before the law, gender equality, etc. Separating the state from religion is what secularism entails. Additionally, it implies that secular state laws will prevail over religious laws. The ability to defend personal laws under the guise of secularism is quite perplexing. The UCC in no way opposes secularism, favors it in the true sense.

The name of democracy is used to support the third misguided opposition to UCC. Beyond "what the people want", democracy is much more [13]. Democracy is distinguished by the rule of law, which is based on logic and reason and is established after a fair process of discussions, debates, and votes rather than on unquestionable religious dictates.

The ideal of "one law for all" is the basis on which a modern liberal-secular-democratic nation rests. In contrast to a non-liberal and undemocratic system like Sharia, which aims to control behavior and demand obedience, this law's goal is to liberate people in their pursuit of happiness and advancement.

Many intellectuals and political figures today are misguidedly opposed to UCC, and their arguments rest on shaky ground. They oppose the view simply because the ruling party favors it.

Judicial Perspective

The judiciary is regarded as the protector of an individual's rights. Over time, the courts have played a vital role in shaping society and helping to reform it into a dynamic society. The judiciary for a long time has been advocating for the implementation of a uniform civil code, and in furtherance has pronounced various judgments.

The Shah Bano case marks the beginning of the judiciary analyzing the conflicts of personal laws, due to differences in belief systems, and questioning why the uniform law remains a dead letter. According to Section 125 of the criminal procedure code, the petitioner in this case demanded maintenance from her husband. The conflict arose between personal law and unified procedural law. According to personal law, the period of maintenance extends only till the iddat period; it is the period that a woman observes till three months after her divorce. According to Islamic personal law, the husband is no longer required to support his wife after the end of this time frame. On the other hand, Section 125 makes the husband liable to maintain his wife, where she is unable to maintain herself, and unlike personal law, is not limited to a certain period. The intent of Section 125 is to enable speedy procedure, unlike civil laws which are affected by caste, religion, etc. The motive of speedy justice is defeated due to conflicting laws. The Supreme Court, in this landmark case, observed that it is upon the state to secure a uniform civil code, as it has the legislative competence to do so. Further said, "*A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies* [14]".

The Supreme Court in yet another case of Ms. Jordon Diengdeh v. S.S. Chopra [15] faced conflicting laws relating to the dissolution of marriage. The issue was between the couple, where the wife was of a

Naga tribe, and the husband was Sikh in religion. The court observed the diversity of personal laws governing marriage. Looking at the problems faced due to the diversity of personal laws, the court was of the view that, “*Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste* [16]”.

The given two judgments date back to 1985. It has been 37 years since these judgments have been passed, yet the situation remains the same. A similar view was reiterated by the judiciary in *Sarla Mudgal v. Union of India* [17]. In this case, the husband after being in wedlock solemnized under Hindu marriage, and the couple converted to the Islamic religion. Husband thereafter solemnized second marriage under Muslim law, which stands void under Section 494 of IPC. The conflict was, whether the marriage is valid under Muslim personal law or void under Section 494 of IPC. The Supreme Court while dealing with the issue, held that “*marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to* [18]”.

In the recent judgment of *Sat Prakash Meena v. Alka Meena* [19], Supreme Court highlighted the necessity for uniform laws for marriage, divorce, succession, etc. In this case, the couple belongs to the Meena community but their marriage was solemnized according to the Hindu Marriage Act. The issue was whether for divorce Section 13 of the HMA would apply or will be excluded under Section 2(2) of the said Act. Yet again the issue of conflicting laws governing marriage and divorce arose. Therefore, the court once more necessitated the State for the application of a uniform civil code [20].

IMPLEMENTATION OF THE UNIFORM CIVIL CODE

India has taken a big step towards unity by introducing the uniform civil code. A significant impact will be made on Indian democracy through the implementation of the uniform civil code. UCC is a path to achieving a welfare state in a true sense. It will prove that constitutional morality and social morality must go hand in hand to achieve the vision of a welfare state.

The incorporation of Article 44 and secularism by the constitution framers opened the door for uniformity, keeping in mind the protection of religious rights mentioned in part III of the Constitution.

The purview of the UCC covers the entire body of laws relating to properties and other personal matters like marriage, divorce, succession, maintenance, adoption, inheritance, etc. [21].

The UCC has long been seen as a powerful tool for realizing and enacting true secularism as well as for empowering Indian women and improving their social standing in terms of marriage and family. No renaissance or reformation of any kind has taken place in India. As a result, the state now has the sole responsibility of interfering in religious matters in order to remove obstructions to governance.

Indian society finds it difficult to accept or adapt to the changes brought up in the legal aspects, mainly due to conservativeness, illiteracy, and unawareness. People need to understand that laws and religion are two distinct concepts and that the UCC in no way limits their right to practice their religion.

Justice RM Sahai’s words, which sum up the entire discussion, are as follows:

“Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fiber. But religious practices, violation of human rights and dignity, and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for the protection of the oppressed and for the promotion of national unity and solidarity” [22].

UCC exists in Goa, widely accepted by almost all the communities. The Goa civil code is collectively referred to as family laws, under which these laws are applicable to one and all without any sort of discrimination. Family matters are decided, and people get justice in a true sense.

Women's rights, in particular, are currently restricted by the cultures in which they are raised.

The Constitution guarantees of basic liberties to citizens are in no way compromised by UCC. No matter their religion, it aims to treat everyone equally. It would be introduced as a new law rather than a combination of personal laws. The blending of personal laws might lead to biases.

Challenges of Implementation

The application of a uniform civil code has not taken place to this day. The difficulties in the application of a uniform civil code are enormous. The diversity of the nation makes it a grave challenge for the state to apply the uniform law. People in multicultural states fear losing their identity. The minorities fear the imposition of the Hindu code disregarding their interest. In the case, *Sarla Mudgal v. Union of India*, Justice Singh said "*When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, anymore, the introduction of a "uniform civil code" for all citizens in the territory of India* [23]." The justice referred to earlier laws that were codified, wherein several other personal laws were codified under the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Adoption and Maintenance Act, 1956, and the Hindu Minority and Guardianship Act, 1956. This gives ground to the minorities to be feared of loss of their identities, where the state overlooks cultural diversity.

The field where it is problematic to create a uniform civil code is its impact on the freedom of religion. Various communities claim that a uniform civil code is a threat to freedom of religion; it will infringe on their right to practice, profess, and propagate their religion freely. It is seen as the imposition of a uniform civil code will wipe off their religion and their religious practices. Even civil matters are governed by various personal laws run through religious beliefs or customary practices. The communities are not willing to let the uniform law interfere with their practices. Although the aim of the uniform civil code is not to nullify the religion of the communities, it intends to unify the laws relating to civil nature. The code does not infringe on the fundamental right to freedom of religion, because the fundamental right itself safeguards the state to make laws that reform the nation for public welfare.

A further issue with the uniform civil code is that, in accordance with Article 44 of the directive principles of state policy, it is not legally enforceable. These principles represent the duties of the state but are not an obligation. The lack of enforceability of the directive principle is another obstacle in front of it. However not enforceable, they are fundamental in governance. The intention of the legislature while inserting this provision was to impose a duty on the state, they were never inserted to be ignored, for they are unenforceable.

Suggestions and Possible Solutions

The critical part is finding a common solution that serves the interest of all the communities be it majority or minority and implementing the uniform civil code. The implementation could be achieved through various methods, the important role of the lawmakers is to find the best method suited for a country, like India. Following are some possible solutions.

The Church and State Relations Model

India is not an aggressive secular state, if it were so, the subject matter of marriage, divorce, adoption, inheritance, and maintenance would not have been governed by varied personal laws. India is rather accommodating to a secular state, where it gives equal importance to religious practices. India holds a similarity with the US model rather than France and Turkey [24]. The US follows the model of Church and state relations. In this particular model, religious laws and civil law, are equally respected. India with the existence of diverse communities needs such kind of arrangement, as the people of India are extremely loyal and believe in their faith towards a particular religion highly. The separation of people from their religious practices and instead the introduction of a civil practice would ultimately lead to the defeat of the proposed uniform civil code.

Implementing Gradually

Several guidelines and actions should be kept in mind to achieve the acceptability of a uniform civil code among various communities. For achieving the parallel existence of religious and civil law, sufficient time must be observed to let people get accustomed to the operation of civil law. Time must be taken to study how the parallel existence of law will work on the community, by first applying the law state to state rather than applying it nationwide. This model will also work if the legislature observes the working of the Goa Model where the uniform civil code already exists. This model works on the Portuguese Civil Code, with the Goan heritage ingrained in the people of Goa; they follow the Portuguese Civil Code. The Portuguese Civil Code of 1867 is successful because of its systemic formulation.

Mediating the Conflict

Another solution to the conflict between personal laws and the uniform civil code can be found through mediation. Two-level mediation has to be followed: individual mediation and mediation among communities. The legislative process can help achieve inter-community mediation. The catalyst that is required here is, the setting up of a parliamentary committee, wherein representatives of different religious communities should come forward and put forth recommendations and possible solutions. When representatives of different communities gather and share their views, a possible solution to Article 44 may come up. With inter-community mediation, individual mediation holds equal importance. It is required for the people of varied communities to find solutions to different issues by interacting and resolving their disputes.

Need for a Legislative Process

The judiciary performs the work of interpreting of statutes; it does not formulate the laws. For attaining a uniform civil code, it is upon the legislature to formulate such laws that are acceptable amongst the communities. In the case of Shah Bano, the judiciary has stressed the legislature to take action to secure a common civil code. To achieve uniformity of law in the area of marriage, registration of marriage is very important. The mandate of the necessity of registration of marriage can only be forged by the legislature by formulating a law relating to it.

CONCLUSION

The only essence of the concept of a uniform civil code is that it has the potential to unite India, and thus its enactment will result in national integration. People should realize that laws relating to marriage, divorce, and maintenance have no linkage with religion. These are matters between man and man, and in no way between man and God. Therefore, the question of violation of religious beliefs or secularism must not find its place in any way. Protecting the nation's unity and integrity is the sole goal of this idea.

People must understand that if they continue to strictly adhere to these personal laws, the vision of unity cannot be attained. The uniform civil code is an attempt to unify these laws and is in no way disastrous, but is only for the better and impartial institutions of family and society.

Unity must exist in diversity but not at the cost of issues in terms of family matters and other civil matters. Given that it practically unites people, respect for this diversity must flourish. Uniform laws for all in any sort of civil matters is the only way that paves the direction of nationhood, which follows brotherhood.

India is ripe enough to understand this matter of concern and not attach the idea of threat, but attach the essence of unity and preservation of the philosophy of its secular principles and gender equality.

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