

TO KNOW: UNIFORM CIVIL CODE

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ABSTRACT

This paper focuses on the idea of the Uniform Civil Code and its legal implications. The necessity for or desire for the Uniform Civil Code is further discussed in this section, as well as whether it should be adopted and its benefits and drawbacks. As we move closer to the article's approach, we will discuss how the relationship between the Uniform Civil Code and secularism is discussed, as well as how the implementation of the UCC may cause the country to fall apart, which will undermine the nation's ability to maintain peace and harmony among its citizens. The Uniform Civil Code and constitutional protections are then covered in further detail. This paper also discusses the opinions and stance of the Indian judicial system about the Uniform Civil Code. Last but not least, this essay comes to a few sets of conclusions and recommendations.

KEYWORDS: Religion, Marriage, Uniform Civil Code, Gender-equality, Secular.

I. INTRODUCTION:

India is a united diverse nation comprising of various religions such as Hinduism, Christianity, Islam, Buddhism, Sikhism, and Zoroastrianism and so on. Precisely, India is a secular nation as included in the preamble after the 42nd Amendment of the Indian Constitution by the year of 1976. The term “secular” is defined as the state not following a single religion as the official religion and giving equal respect and protecting all equally rather than discriminating them opting for secularism.

The Uniform Civil Code defined under Article 44 Indian constitution under the Directive Principles of the State Policy, which signifies the necessity of the state to replace the personal laws enacted individually with the Uniform Civil Code irrespective of any religion to secure the residents throughout the India, which could be termed as “One Nation, One Law”. This deals with highly controversial subjective matter as the main motive of the partition between India and Pakistan was due to the issue between religions.

This acts as a threat of the nation over the years by the political organizations across the nation. Specifically, India is governed by various personal laws for separate religion according to religious faith, customs and traditions of each religion. Therefore, the introduction of Uniform Civil Code creates a controversy among the public and various religious leaders and political parties and the detailed vision would be discussed further.

II. ANALYSIS ON EXISTING PERSONAL LAWS:

A. Hindu Law: Before 1955, under Hindu law, polygamy prevailed and it was absolutely gender-biased which signifies that men and women were not treated equally in any subject matter and women were considered to be inferior in various matrimonial topics such as adoption, succession, marriage, etc. Even before 1955 polygamy took place in India.

For example, women are not supposed to be legal guardian of her child until the lifetime of her husband and women cannot adopt a child

on her own, these signifies the patriarchal nature of the ancient India. Amidst of all these, even certain discriminatory provisions like these are still in force. Even regarding properties, Hindu women were not obliged to mortgage or sell property on her own.

For instance, except in a few states like Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu, a Hindu woman is not a coparcener in Hindu coparceners. She is therefore ineligible for a part of the coparcenary. Thus, it is ignorant to the fact that gender inequity has not been totally eradicated by the codification of Hindu personal laws.

Initiative to achieve gender-justice: The internal affairs of the family are handled by the women without interventions. If personal laws are held to be constant, women will always be in the hands of men, which pose a challenge to fundamental principles to survive in this unequal justice under the dominance of men. If Uniform Civil Code is adopted, it will create the conditions for women to overcome a number of social inconveniences, such as the bigamy, dowry systems, marriage, succession, remarriage, inheritance and various other problems which make women feel inferior and degraded.¹

In the case of *Mary Roy v. State of Kerala*², certain provisions of the Travancore Christian Succession Act of 1916 were argued to be in violation of Article 14³ of the Constitution before the Supreme Court. In accordance with these clauses, the widow of an intestate decedent was only entitled to his daughter and a life interest that terminated at her death or remarriage. The Indian Succession Act, 1925, was asserted to have superseded the Travancore Act. The Travancore Act was overruled by the Indian Succession Act, according to the Supreme Court, which avoided considering whether gender inequality in succession and inheritance matters violated

Article 14. Mary Roy has been characterized as a "momentous" decision towards ensuring gender equality in the succession area.

B. Muslim law:

The Holy Quran accords men and women equal rights and elevates women to respectable status. However, there are some elements of Islam that make Muslim women, especially spouses, feel inferior and insecure. Islam allows men to get married four times, but not women, who are viewed as unchaste and impure if they do. When the husband's manner of divorcing the wife by saying triple Talaq is extremely discriminating, women are not even allowed the ability to divorce their husbands. Despite the Holy Quran's message, this is the case. The Allahabad High Court has ruled that this was invalid⁴ and unconstitutional.

Despite the claims of certain Muslim scholars that Islam is more open and progressive in this area, a Muslim woman nevertheless faces discrimination in the question of succession. The legal position is that the Muslim man receives twice as much as the Muslim female when two scholars or residuary of opposite sex but equal degree inherit the property of the deceased. The Muslim woman is not obligated to be kept after the Iddat period, even in the case of maintenance. The Criminal Procedure Code, which requires the husband to support his wife, including a divorced wife, until she can support herself, is a secular law that applies to everyone; however there is debate over whether Muslim males should abide by this clause.

In the case of *Mohd Ahmed Khan v. Shah Bano Begum*⁵, the Supreme Court, speaking through then Chief Justice Y.V. Chandrachud, held that Muslims are also subject to the provisions of Section 125⁶ of the Criminal Procedure Code and that even a Muslim husband is responsible for supporting his divorced wife after the Iddat period. In order to

¹ <https://www.legalserviceindia.com/legal/article-4743-implementation-of-uniform-civil-code-in-india.html>

² *Mary Roy v. State of Kerala*, AIR 1986 SC 1011

³ INDIA CONST. art. 14

⁴ *Shayara Bano vs Union Of India And Ors.*, W.P. (C) No. 118 of 2016.

⁵ *Mohd Ahmed Khan v. Shah Bano Begum*, 1985 SCR (3) 844

⁶ The Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1972 (India)

reversal the Shah Bano Case ruling, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted by the parliament at the height of the dispute.

The result of this law is that unless both spouses submit to the court at the right time that they would like to be organized by the Criminal Procedure Code, a Muslim husband is not required to support his divorced wife past the Iddat period. This is analogous to having a provision but not employing it to preserve personal law space or to adequately compensate the woman who is suffering greatly.

III. **SPECIAL MARRIAGE ACT, 1954:**

This type of marriage law allows for the marriage of two people of different sexes regardless of their religion. Indians were required by this law to get married outside of their own personal law's conventions. Except for Jammu and Kashmir, where it is not in effect due of their special status under Article 370⁷, this law is in effect throughout all of India. This shows the secularism towards the Hindus and all members of the Muslim community must marry under the unique marriage laws.

The Indian Succession Act would govern the system of succession and even the system of divorce under this law, which made polygamy illegal. However, there are guidelines that must be followed in Goa for divorce. According to this act, members of the Muslim community who have registered their marriages in Goa are not permitted to take more than one wife. During the marriage, the couple's wealth and property are equally divided between them, and if either spouse passes away, the other spouse inherits the deceased spouse's half share. The children also shared the remaining half of the land in the same proportion.

IV. **CRITICAL ANALYSIS:**

There is a stronger likelihood of it passing now thanks to repeated judicial urgings, a powerful women's movement, and a majoritarian administration. Although the All

India Muslim Personal Law Board (AIMPLB) has made it clear that it will oppose any efforts to develop a Uniform Civil Code, the recent Triple Talaq Act was overwhelmingly supported by Muslim women, despite clerics' continued opposition. Therefore, it is essential to pass legislation establishing a Uniform Civil Code in an age where citizens' rights are of utmost importance and the accepted viewpoint is to strive towards a society that respects human rights regardless of caste, religion, region, or gender.⁸

V. **IN RELATION TO INDIAN CONSTITUTION:**

The main issue is that, according to Article 44 of the Constitution, if the constitution's authors had wanted to adopt a unified civil code in India, they shouldn't have included it in the Directive Principles of State Policy. As the name implies, the State policy concepts outlined in Part IV (Articles 36-51) of the Directive are essentially recommendations for the government.

They are not enforceable by the Court and do not need to be strictly pursued. These are only constructive requirements for the State that will promote effective leadership. The Indian Constitution's Preamble declares that the country is a republican, democratic secular state.

This indicates that there is absolutely no State religion. Any form of religious discrimination is prohibited in a secular state. Religion is only interested in how people and God interact. It implies that religion shouldn't affect a person's daily existence. As a cause and effect relationship, the secularization process is strongly related to the objective of the unified Civil Code.

Jeevan Reddy Justice stated in the *R.S. Bommai v. Union of India*⁹ case it was said that while religion can be governed by the government through the creation of laws, it is a matter of personal faith and cannot be combined with secular practices. There is a wall of separation between religion and state

⁸ Tanya Sharma, *Uniform Civil Code: A Detailed Analysis*, ACCLAIMS, (July 8, 2023, 3:35 Uniform Civil Code: A Detailed Analysis)

⁹ R.S. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3) 1

⁷ INDIA CONST. art. 370

throughout all of India, which is different from the doctrine of secularism established by the United States and the European States.

A "Secular" Democratic Republic has been determined to be established by the Preamble of the Indian Constitution. This indicates that there is no official religion, or, put another way, that the state does not behave in accordance with any particular religion and does not engage in religious prejudice. Freedom of religion and freedom to conduct religious affairs are guaranteed by Articles 25 and 26 of the Indian Constitution, which are enforceable basic rights.

The issue with having personal laws for each religion is that doing so would require the constitution to include special provisions for a particular group of believers. This would not only cause resentment but also animosity in the public, so it is crucial that the uniform civil code introduce laws that strike a balance between the protection of religious beliefs and the fundamental rights of the various communities residing in the state. Marriage, support, divorce, etc. laws must be in place to regulate them and they should be of a secular nature.

VI. ROLE OF JUDICIARY:

The UCC goal set forth in Article 44 has not yet been realized, despite more than five decades having passed since the Constitution's ratification. However, efforts in this area persisted as evidenced by a number of Supreme Court decisions from time to time.

Kuldeep Singh, J ruled in case of *Sarla Mudgal (Smt.), and others v. Union of India and others*¹⁰, the court concluded that "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44 and ordered the government to comply with Article 44's instruction and provide an affidavit detailing its actions. In order to ensure that its citizens have a UCC throughout India, the Supreme Court asked the Indian Government to review Article

44 of the Indian Constitution through the Prime Minister of the country. Additionally, he proposed creating a committee to design a Conversion of Religion Act. While concurring with Kuldeep Singh, J., R.M. Shahai, J. also agreed that "Ours is a Secular Democratic Republic. Our culture is built on the principle of religious freedom. However, religious practices that violate human rights and dignity and choke fundamental civil and material freedoms are not acts of autonomy but rather oppression.

In *Danial Latifi and another v. Union of India*¹¹, The Muslim Women (Protection of Rights on Divorce) Act, Sections 3 and 4, were maintained by the court as constitutional since they did not violate Articles 14, 15, or 21 of the Indian Constitution. She is not eligible to request support under Section 125 of the Cr.P.C. since a Muslim husband is required to provide reasonable and equitable provisions for the future of the divorced wife, including maintenance, under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. A divorced Muslim woman who is unable to support herself after the Iddat period may pursue maintenance from relatives or the wakf board under section 4 of the Act.¹²

VII. CONCLUSION:

In regard, to the judgments cited and various other provisions stated, it could be concluded that obviously UCC has both pros and cons. Implementation of Uniform Civil Code would result in the gender equality and upliftment of women in the society and male dominance in the marital world would be reduced. On the other hand, Article 25 of the Indian Constitution discusses about the freedom to practice one's own religion, which would be a contract if UCC is followed by the people all over the country. The cultural rights and religious customs of the people would be varied for various religions and the traditional method followed over the years would fade away over the years.

¹¹ *Danial Latifi and another v. Union of India* (2001) 7 SCC 740

¹² Satyam Singh, *UNIFORM CIVIL CODE: A CRITICAL STUDY OF INDIVIDUAL RIGHTS AND THE ROLE OF SECULAR STATE*, VOL.3 ISSUE 11, JOURNAL ON CONTEMPORARY ISSUES OF LAW [JCI], <https://jil.lsyndicate.com/wp-content/uploads/2023/06/Satyam-Shobitabh.pdf>

¹⁰ *Sarla Mudgal (Smt.), and others v. Union of India and others* AIR 1995 SC 1531

The Indian Government has already implemented Special Marriage Act for inter-caste or inter-religion marriages; in that case the people who could opt for provisions under UCC could prefer it. Uniform Civil could be made mandatory if there are no such provisions available, but as there is an option already, in my point of view involving the people who have strong religious belief to opt for UCC would not be a good option.

A man of common sense would say that the code should be fair and just, and that the UCC should strike a balance between safeguarding individuals' religious beliefs and fundamental rights. It must be determined what the driving principle of UCC is—whether it is the nation's integrity and the motto "one nation under God" or whether it is the removal of the gender-based inequalities ingrained in all personal laws.¹³ The fact that UCC has emerged as an advocate for gender equality is notable, nevertheless. There is little doubt that the work of reforming many communities' personal laws and enacting a uniform civil code is tedious. The main obstacles to the establishment of a unified civil code are the deeply ingrained diversity of personal laws, culture, and custom.

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¹³ Qwerty9729, *Uniform Civil Code: One Nation One Code*, LEGALSERVICEINDIA, <https://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>