

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIAL TEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*



*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.



# **THE DEBATE ON UNIFORM CIVIL CODE IN INDIA**

AUTHORED BY - LOVISH DHAWAN

CT UNIVERSITY

## **ABSTRACT**

The Uniform Civil Code (UCC) has been a long-standing subject of debate in India, evoking both strong support and significant opposition. Article 44 of the Indian Constitution suggests that the state shall strive for the implementation of a UCC, but its application faces substantial challenges. The issue involves balancing India's pluralistic society with the constitutional principles of justice, equality, and secularism. This paper explores the constitutional framework, socio-cultural challenges, gender implications, and comparative global examples to assess the viability of UCC. It proposes a phased, consultative, and regionally adaptable approach to its implementation.

## **INTRODUCTION**

India's personal laws are heavily influenced by religious and customary practices, leading to a fragmented legal system. Personal laws governing marriage, divorce, inheritance, and adoption differ vastly for Hindus, Muslims, Christians, and other religious groups. The Indian Constitution, while establishing a secular republic, recognizes this diversity by allowing separate personal laws for various communities.

However, these laws often conflict with the principles of equality and justice.

Article 44 of the Constitution envisions a Uniform Civil Code to ensure equality before the law. Despite this, the UCC has not been implemented, with many citing concerns over religious freedom, cultural preservation, and political opposition. The discussion around UCC raises essential questions about whether it is feasible, necessary, or desirable in India's context.

## **1. CONSTITUTIONAL BASIS**

### **1.1 Article 44 and the Directive Principles of State Policy**

Article 44 mandates that the state shall endeavor to secure for the citizens a Uniform Civil Code, but as part of the Directive Principles of State Policy (DPSPs), it remains a non-enforceable provision. The Directive Principles, while guiding the state's policy decisions, are

not justiciable, meaning that they cannot be directly enforced through the courts. However, the state is expected to work towards these principles, including the UCC, as part of its broader agenda for social justice and legal equality.

## **1.2 Fundamental Rights and Religious Freedom**

The implementation of UCC raises significant concerns about religious freedom guaranteed by Articles 25 to 28 of the Indian Constitution.

These Articles safeguard an individual's right to practice, profess, and propagate their religion. Personal laws, particularly in religious communities like Muslims and Hindus, have evolved from religious texts and practices, and a move toward a uniform law could be seen as infringing on the rights of individuals to follow their religion.

However, the conflict arises in cases where these laws contradict constitutional provisions of equality and non-discrimination. For example, Muslim personal law allows for polygamy and unequal inheritance for women, while Hindu personal law historically discriminated against women in matters of inheritance, though reforms have been introduced in the last few decades.

## **1.3 Judicial Advocacy for UCC**

The Indian judiciary has, on several occasions, called for the implementation of UCC. In Shah Bano Case (1985), the Supreme Court advocated for a law that would ensure maintenance for divorced Muslim women, aligning personal law with secular, gender-neutral standards.

However, this was met with strong opposition, leading to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which overturned the judgment. The Court's stance, nevertheless, set a precedent for future discussions on the need for legal uniformity.

Similarly, in the Sarla Mudgal Case (1995), the Supreme Court again pointed out the discriminatory nature of personal laws, especially in cases of bigamy, and emphasized the need for a UCC. In Jose Paulo Coutinho v. Maria Luiza Valentina Pereira (2019), the Court recognized Goa's Civil Code as an ideal model for a UCC, praising its progressive approach to marriage, divorce, and inheritance laws that apply uniformly to all citizens, irrespective of religion.

## 2. Socio-Legal Challenges

### 2.1 Religious and Cultural Diversity

India's diversity presents a complex challenge for UCC. With over 1.3 billion people, belonging to different religious and cultural backgrounds, a uniform code risks infringing upon centuries-old traditions and practices. In particular, the minority communities in India—primarily Muslims and Christians—have expressed concerns that the UCC would undermine their religious laws and cultural practices.

Muslims, for instance, have raised concerns over the status of practices like polygamy and the distribution of inheritance under Shariat law, while Christians may view a UCC as threatening their personal laws surrounding marriage and divorce. These fears are often based on misconceptions about the scope of UCC and the mistaken belief that it would impose a "Hindu-centric" legal framework.

### 2.2 Gender Inequality in Personal Laws

Personal laws in India have long been a source of gender inequality. Many personal laws, including Hindu, Muslim, and Christian laws, have provisions that are unequal, especially regarding inheritance, divorce, and maintenance.

Hindu Personal Law has historically been patriarchal, where daughters were not entitled to ancestral property. The Hindu Succession Act (1956) and its amendments, including the 2015 Amendment, granted daughters equal inheritance rights. Despite this, many local customs persist that prevent women from claiming their rights.

Muslim Personal Law allows polygamy (up to four wives), and inheritance shares for women are half of what men receive. Women also face difficulties in securing maintenance and other rights in divorce cases under the existing Muslim Personal Law.

Christian Personal Law is governed by the Indian Christian Marriage Act (1872) and the Divorce Act (1869), which, like other personal laws, also discriminates against women in matters of inheritance and maintenance.

UCC could potentially address these gender disparities by creating uniform provisions that guarantee equal rights for men and women, irrespective of religious affiliation.



### **2.3 Political Polarization**

The political environment in India complicates the implementation of UCC. The issue is often polarized, with some political groups opposing UCC on the grounds that it may impose majority community norms on minorities. This political divide often leads to a deadlock in the legal process, preventing any meaningful reforms in personal laws. The push for UCC is viewed by some as a symbol of majoritarianism, which further fuels resistance from minority communities.

### **2.4 Federalism and Regional Autonomy**

India's federal structure allows states to make laws regarding personal matters like marriage, divorce, and inheritance. As a result, regional variations in personal laws exist. For example, the Goa Civil Code offers a secular and uniform legal framework for all communities in Goa, which has been praised for its progressive and gender-neutral approach.

The idea of implementing a single UCC nationwide could face resistance from states with distinct regional laws, as these states may feel that their autonomy is being undermined. Hence, a balanced, federal approach, allowing for regional adaptations within a uniform framework, could be more feasible.

## **3. Comparative Analysis**

### **3.1 Goa's Civil Code: A Model for UCC?**

Goa's Civil Code offers a compelling example of a UCC that applies equally to all citizens in the state, irrespective of their religion. This code governs marriage, inheritance, adoption, and divorce, with provisions that ensure gender equality, protect children's rights, and align with the principles of secularism.

The Goa Civil Code allows for some exceptions, such as polygamy for Muslims, but it has been hailed as a model for a practical, culturally sensitive approach to uniform civil law. However, scaling this model to the entire country would require careful consideration of the diverse cultural and religious practices across different states.

### **3.2 International Comparative Models**

France is one of the most famous examples of a country that has implemented a uniform legal framework in civil matters, such as the Napoleonic Code. This secular system was created to

ensure equal rights, remove feudal privileges, and establish uniformity in legal processes. While France's experience demonstrates the effectiveness of a single civil code, it's important to recognize that France's social and cultural context differs greatly from India's.

Turkey, following its transition to a secular republic under Mustafa Kemal Atatürk in the early 20th century, adopted the Swiss Civil Code, replacing Islamic law with a secular legal system. This transition, though effective, was met with resistance, especially from conservative religious groups. The experience shows that such a radical shift in the legal framework requires careful handling of cultural and religious sensitivities.

South Africa offers a more pluralistic model, where personal laws from different communities (including customary, religious, and secular laws) coexist, but all must comply with the country's constitution, particularly in relation to equality and non-discrimination. This model has allowed South Africa to maintain cultural diversity while ensuring that basic rights are protected.

## **4. Benefits of UCC**

### **4.1 Promoting Gender Equality**

A UCC could potentially eliminate gender biases present in many personal laws, ensuring that women and men have equal rights in marriage, divorce, inheritance, and property. It could abolish discriminatory practices like polygamy, unequal inheritance shares, and child marriage.

### **4.2 Strengthening Secularism**

A uniform law that applies to all citizens, regardless of religion, would reinforce India's secular ideals. It would ensure that no individual is treated differently because of their religion when it comes to matters like marriage, divorce, or inheritance.

### **4.3 Legal Simplicity and Efficiency**

Currently, India is burdened with a complex legal system where multiple personal laws apply to different religious communities, making legal processes cumbersome and inconsistent. A Uniform Civil Code could streamline the legal system by consolidating these personal laws into one cohesive framework. This would reduce legal ambiguity and inconsistencies, making it easier for individuals to navigate the legal system and ensuring that similar cases are treated equally, regardless of the parties' religion.

#### **4.4 Promoting National Integration**

India's strength lies in its diversity, but that same diversity sometimes leads to divisions and tensions between religious communities. A UCC could promote national integration by uniting all citizens under a single legal framework, irrespective of their religious affiliations. This shared legal identity could help foster a sense of unity and belonging among the Indian populace, diminishing the divide between communities that is often exacerbated by divergent personal laws.

#### **4.5 Protecting Children's Rights**

In matters of child marriage, adoption, and guardianship, UCC could provide stronger protections for children by standardizing laws across communities. Currently, child marriage continues to be practiced under certain personal laws, particularly in some religious communities, which undermines the rights of children. A uniform code that prioritizes the welfare of children, irrespective of their religion, could significantly reduce practices like child marriage and promote better protections for children in divorce or custody disputes.

### **5. Recommendations for Phased Implementation**

#### **5.1 Gradual and Phased Approach**

Given the sensitivity of the issue and the complexities of India's diverse religious and cultural landscape, the implementation of the UCC should be gradual and phased. The initial stages could involve reforms in less controversial areas such as inheritance, adoption, and maintenance. By tackling these areas first, the government could build trust and support for the UCC, allowing for a smoother transition to more complex matters like marriage and divorce.

For example, introducing uniform inheritance laws that guarantee equal rights for both sons and daughters could help create a foundation of legal equality that would make future reforms in marriage and divorce less contentious. A phased approach would also provide the government time to address concerns raised by various communities and ensure that adequate safeguards are built into the law.

#### **5.2 National Consultation Process**

A key to successful UCC implementation will be an extensive national consultation process that involves representatives from all religious communities, legal experts, women's rights organizations, and other stakeholders. This inclusive process should focus on discussing the

provisions of the UCC in detail, addressing concerns, and building consensus.

The consultation process should also include regional consultations to take into account the specific practices and customs of different states. This will help in ensuring that the UCC is not seen as an imposition by any one community and is seen as a tool for promoting equality and justice for all citizens.

### **5.3 Legal Education and Public Awareness**

To minimize resistance and ensure smooth adoption, the government must launch a comprehensive legal education and public awareness campaign about the UCC. Such a campaign should focus on educating citizens about the benefits of a uniform legal system, the protections offered to women and marginalized communities, and how the UCC aligns with India's constitutional values of equality and justice.

Public awareness campaigns can also help dispel misconceptions and fears surrounding the UCC, particularly in religious communities that may perceive the law as a threat to their traditional practices.

Transparent communication and dialogue will be critical to gaining public trust and support.

## **6. Conclusion**

The Uniform Civil Code is a pivotal issue for India, representing both the aspiration for a more egalitarian society and the challenge of reconciling the country's rich cultural diversity with the need for legal uniformity. The benefits of a UCC are undeniable in terms of promoting gender equality, national integration, secularism, and the protection of children's rights. However, the complexity of India's social fabric requires that its implementation be handled with care, sensitivity, and inclusivity.

A phased, consultative approach that allows for gradual adaptation and addresses the concerns of all stakeholders will be key to the successful adoption of a UCC. In addition, the legal reforms must ensure that the secular, progressive nature of the code is maintained while respecting the cultural and religious rights of individuals.

The experience of countries with similar legal transitions, like France and Turkey, provides

valuable insights into the challenges and strategies for implementing a uniform legal code. India's model must take into account the unique socio-political context of the country, ensuring that the UCC is not just a legal reform but a tool for greater justice, equality, and social cohesion. Ultimately, the successful implementation of a UCC would signal India's commitment to the values of equality and justice for all, moving closer to the realization of a truly unified and progressive society.

### Bibliography

1. Basu, D.D. Introduction to the Constitution of India. 22nd Edition, 2022.
2. Jain, M.P. Indian Constitutional Law. 8th Edition, 2020.
3. Law Commission of India. Consultation Paper on Reform of Family Law, 2018.
4. Supreme Court Judgments:  
Mohd. Ahmed Khan v. Shah Bano Begum (1985 AIR 945). Sarla Mudgal v. Union of India (1995 AIR 1531).  
Jose Paulo Coutinho v. Maria Luiza Valentina Pereira (2019).
5. Mukherjee, S. (2015). "The Uniform Civil Code: A Move Toward National Integration or Cultural Imperialism?" Journal of Indian Law and Society, 11(1), 24-37.
6. Agarwal, P. (2021). Gender Justice and the Uniform Civil Code: A Feminist Perspective. New Delhi: Oxford University Press.
7. India, Law Commission of. (2018). Report No. 242 on Reform of Family Law.
8. Goa Civil Code, 1867.
9. Ghosh, P. (2019). Personal Laws and the State: Exploring the UCC Debate. New Delhi: LexisNexis.