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UNIFORM CIVIL CODE AND SECULARISM: BALANCING EQUALITY AND DIVERSITY IN INDIA

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ABSTRACT

The Uniform Civil Code (UCC), enshrined in Article 44 of the Indian Constitution, has been a subject of sustained attention due to judicial interventions and vigorous parliamentary debates. The UCC proposes a unified framework of personal laws governing marriage, divorce, inheritance, adoption, and maintenance, applicable to all citizens irrespective of their religion. Proponents of the UCC argue that its implementation would reinforce the constitutional principle of equality and ensure uniformity in personal laws. However, critics contend that it could conflict with the religious practices and cultural traditions of various communities, potentially undermining India's pluralistic identity.

This paper delves into the relationship between the UCC and secularism, two core principles of the Indian Constitution. It explores the necessity of implementing a uniform legal framework, assessing its potential to promote justice and equality. Additionally, the paper examines the practical challenges associated with the UCC's implementation, including the need to balance the ideals of secularism with the rights of religious and cultural communities. Furthermore, the study evaluates whether adopting the UCC would benefit a culturally diverse nation like India, where unity in diversity forms the cornerstone of national identity. By analyzing these dimensions, the paper aims to provide a nuanced perspective on the implications of the UCC, addressing its feasibility, relevance, and alignment with India's constitutional vision of equality and secularism.

Keywords: Uniform Civil Code, Secularism, Equality, Constitution, Indian diversity

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INTRODUCTION:

A thorough reading of the constituent assembly debates on the incorporation of Uniform Civil Code¹ (UCC) into the Indian Constitution reveals that several arguments were laid down for and against the inclusion of UCC. At this juncture it is important to throw some light into the arguments that were presented. Mr. Mohamed Ismail Sahib opined that “for creating and augmenting harmony in the land, it is not necessary to compel people to give up their personal laws”². Mr. Naziruddin Ahamad speaking on behalf of not just Muslim community but all other communities presented that every religion having its own set of laws, these religious laws must be kept out in framing the UCC³. Shri Alladi Krishnaswami Ayyar points out that “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 matters⁴”.

Protection of religious diversity, uniformity for the sake of national unity⁵, implementation of the UCC only with the consent of the people were few of the ideas portrayed by the constitution makers on the matter of “Uniform Civil Code”.

INTERPLAY BETWEEN UCC AND SECULARISM:

The principle of Uniform Civil Code aims at harmonizing and standardizing the personal laws of the citizens in matters relating to marriage, divorce, adoption, inheritance inter alia whereas the concept of secularism being the basic feature of the Constitution seeks to secure all its citizens “liberty to thought, belief, faith and worship”. Secularism eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion. The state can have no religion of its own. It should treat all religions equally.

Art. 25(1) guarantees the freedom of conscience and the right to profess, practice and propagate any religion. As we know that no fundamental rights are absolute in nature, even right to freedom of religion is not free from restrictions. Discussion of these restrictions play a

¹ Article 44 Uniform Civil Code for the Citizens - The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

² Constitutional Assembly Debates, Vol. VII, 23.11.1948, at p. 541

³ *Ibid*

⁴ *Ibid* at p.549

⁵ P. Ishwara Bhat, *Law and Social Transformation* (Eastern Book Company, Lucknow 2020) at. p717

significant role in the debate concerning the need for UCC and whether implementation of UCC negates the very idea of secularism. The right to religion is subject to public order, morality, health and are also limited by other provisions of Part III of the Indian Constitution. Hence, in the name of religion, public order, morality etc., cannot be dismantled. Additionally, Art. 25(2)(a) and (b) empowers the state to regulate or restrict any activity associated with religious practice and the state is empowered to make any law in order to bring social reform and welfare. Thus, whenever, there is a conflict between the need for social welfare and reform and religious practice, religion must yield.

The objective behind incorporation of Art. 44 is clearly not to jeopardize or interfere with the religious freedom of the citizens, but to standardize the personal laws so as to bring about uniformity. A clear reading of Art. 25 suggests that for the purpose of nurturing social transformation the state is free to interfere with the religious activities and the same will not amount to violation of principle of secularism. Articles 25 and 44 demonstrate that while the former protects religious freedom, the latter separates religion from interpersonal relationships and the rule of law. Without a doubt, the guarantee embodied in Articles 25 and 26 cannot be extended to marriage, succession, and similar secular affairs. By eliminating ideological inconsistencies, a unified civil code will advance the cause of national integration⁶.

LEGISLATIVE AND JUDICIAL EFFORTS IN IMPLEMENTING UCC

Over the years, several attempts have been made by the Parliament to incorporate uniformity in personal laws by enacting various legislations. They have been briefly discussed below.

1. Special Marriage Act, 1954:- The Act promotes secularism, allowing individuals belonging to different religions to enter into the marital bond without following any particular religion⁷.
2. Hindu Marriage Act, 1955:- The Act provides for a common code dealing with matters relating to marriage and divorce for Hindus, Sikhs, Jains and Buddhists⁸.

⁶ John Vallamattan v. Union of India, (2003) AIR 2902 (India)

⁷ Numan Khan, *Is UCC the Unity we Aspire for in our Diversity?*, JUDICIAL ACADEMY JHARKHAND (Feb 17, 2025, 11:27 AM) <https://jajharkhand.in/wp-content/uploads/2024/09/Is-UCC-the-Unity-we-aspire-for-in-our-Diversity.pdf>

⁸ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India)

3. Hindu Succession Act, 1956:- This law has been enacted to amend and codify the law relating to intestate succession among Hindus, Sikhs, Jains and Buddhists. The law aims to achieve uniformity in matters relating to succession, inheritance etc⁹.
4. Dissolution of Muslim Marriages Act, 1939:- The Act has been formulated to unify and clarify Muslim law provisions regarding suits for dissolution of marriage by women married under Muslim law and to resolve uncertainties concerning the impact of a married Muslim woman's renunciation of Islam on her marital bond¹⁰.
5. Muslim Women (Protection of Rights on Divorce) Act, 1986:- The Act aims at protecting the rights of muslim women who have been divorced and also provides for matters pertaining to maintenance¹¹.
6. Muslim Women (Protection of Rights on Marriage) Act, 2019:- Talaq-e-Biddat or Triple Talaq was widely opposed by muslim women from a very long time. As an aftermath of Shayara Bano judgment, the 2019 Act was passed which declares Triple Talaq as void and illegal and also prescribes punishment for the same¹².
7. Goa Uniform Civil Code:- Goa follows Goa Uniform Civil Code which is based on the Portuguese family laws. It provides a uniform law on matters connected with marriage, divorce, succession, property etc¹³.
8. Uniform Civil Code Rules, Uttarakhand, 2025:- Uttarakhand has become the first state in India to give effect to UCC through the implementation of Uniform Civil Code Rules, Uttarakhand, 2025¹⁴. The Rules provides various guidelines on matters relating to marriage, divorce, matrimonial disputes and live-in relationships¹⁵.

The Judiciary has also played an active role in upholding the principle of Uniform Civil Code through a number of judgements over the years. Some of the important case laws have been discussed below.

- Mohd. Ahmed Khan v. Shah Bano Begum

The judgement passed in the above case is a testament to the efforts of the judiciary to uphold the principle of UCC. When a muslim wife was refused payment of maintenance

⁹ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India)

¹⁰ The Dissolution of Muslim Marriage Act, 1939, No. 8, Acts of Parliament, 1939 (India)

¹¹ Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India)

¹² Press Information Bureau, *Muslim Women (Protection of Rights on Marriage) Act, 2019*, GOVERNMENT OF INDIA, (Feb 17, 2025, 11.43AM) <https://pib.gov.in/FactsheetDetails.aspx?Id=148565®=3&lang=1>

¹³ Saurav De, *Navigating the Complexities of Implementing a Uniform Civil Code in India: A Historical and Comparative Analysis*, 7 IJLMHS 1516, 1536 (2024)

¹⁴ TOI News Desk, *Uniform Civil Code implemented in Uttarakhand: Rules Released, Portal Launched*, TOI, Jan 27 2025, <https://timesofindia.indiatimes.com/india/uniform-civil-code-implemented-in-uttarakhand/articleshow/117595906.cms>

¹⁵ The Uniform Civil Code Rules, Uttarakhand, 2025, No. 101, Govt of Uttarakhand, 2025 (India)

by the husband, she knocked the doors of the Court, thereby claiming her right of maintenance under Section 125 of the Criminal Procedure Code, 1973. Sec. 125 imposes a duty upon every person having sufficient means, to maintain his child, wife, father or mother and in case if he fails to perform his duty, the Magistrate is authorized to pass an order directing such person to pay the maintenance amount. This provision is secular in character, aiming to provide uniform relief in cases of abandonment. The court held that “Sec. 125 was a secular welfare measure operating independent of traditional law for assisting persons who are not capable of maintaining themselves”. It further held that “A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”¹⁶.

- Sarla Mudgal v. Union of India

In this case, a Hindu man who was married to a Hindu woman, got converted to Islam in order to solemnize his second marriage with another woman. It is to be noted here that under the Hindu law bigamy is not permitted whereas Muslim law permits a Muslim man to have four wives at a time. The court observed that “religious practices, violative 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 protection of the oppressed and promotion of national unity and solidarity”.

- Danial Latif v. Union of India¹⁷

The Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced woman who has not remarried and is not capable of maintaining herself has got the right to receive maintenance from the estranged husband. The Act imposes the duty on the husband to provide for maintenance even beyond the iddat period.

- John Vallamatton v. Union of India¹⁸

The petitioners in this case challenged the validity of Section 118 of the Indian Succession Act as being violative of Articles 14 and 25 of the Indian Constitution. Sec. 118 imposed certain restrictions on a Christian having a niece, nephew or any other relatives from bequeathing his or her property. The Court observed that S.118 was indeed violative of Article 14. The Court further held that “Art 44 is bases on the

¹⁶ Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556 (India)

¹⁷ Danial Latif v. Union of India (2001) 7 SCC 740 (India)

¹⁸ John Vallamatton v. Union of India, (2003) AIR 2902 (India)

premise that there is no necessary connection between religion and personal law in a civilized society”.

- Shayara Bano v. Union of India¹⁹

Ms. Shayara Bano and her husband Mr. Rizwan Ahmed got married in the year 2002. Throughout her marriage she was harassed for dowry and finally in the year 2015, Mr. Rizwan Ahmed divorced Ms. Bano through Talaq-e-Biddat also known as triple talaq which allows a Muslim husband to divorce his wife just by uttering the word ‘talaq’ three times without the consent of the wife. Ms. Bano challenged the validity of Talaq-e-Biddat, polygamy and nikah-halala as violative of right to equality, right against discrimination and right to livelihood. The Court after hearing the matter held that the practice of triple talaq is unconstitutional and void.

BARRIERS TO THE IMPLEMENTATION OF UCC

1. Unity in Diversity

India being a diverse nation, the process of implementing UCC would become very challenging. It is practically very difficult to bring in common set of rules for country with diverse cultures and traditions²⁰.

2. Attack on Fundamental Right to Religion

The implementation of UCC is considered as an encroachment of fundamental rights guaranteed under Articles 25 to 28.

3. Threat to Religious Minorities

Religious minorities may be under the impression that adoption of UCC would be threat to their customs and religious practices. Hence, there is great amount of opposition against the UCC by religious minorities.

4. Disruption of peace in the society.

One of major problems associated with the implementation of UCC is that it would invoke communal tensions in the society, thereby disrupting peace in the society.

5. Lack of Consensus

The government, legislature, judiciary, and civil society are divided on initiating and implementing the UCC²¹.

¹⁹ Shayara Bano v. Union of India WP (c) 118//2016

²⁰ K Ariffa, *Uniform Civil Code in India: Impact on its Implementation* 1 JLLRD 30, 31 (2024)

²¹ PMF IAS, *Uniform Civil Code: Need, Challenges & Different Views on UCC*, (Mar 10 2025, 4.34 AM) <https://www.pmfias.com/uniform-civil-code/>

CONCLUSION

Even with all the practical challenges associated with the implementation of UCC, the Code is the need of the hour. In the modern day, the age-old customary laws have no place. A common code would ensure equality in the true sense and also eradicate unnecessary practices associated with religion. Uttarakhand has taken up the initiative of implementing the UCC, a thorough reading of the Rules reveals that the Code is not meant to attack the religious freedom but is only an attempt to bring in uniformity in personal laws so as to ensure equality.

