

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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UNIFORM CIVIL CODE: THE NECESSITY AND THE ABSURDITY

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ABSTRACT

Uniform Civil Code (UCC) is also known as “*One Nation- One Law*” is defined under Article 44 of the Indian Constitution. The question as to whether after 74 years of the Constitution India is ripe sufficient to have a uniform civil code has been raised yet again. It talks about the challenges that the nation is currently confronting as well as various persons are treated depending on their personal laws. India is a multilingual, multi-religious nation that is divided in various ways yet united together by a sense of nationalism. Nowadays, every individual is subject to their own personal laws concerning marriage, succession, divorce, and other matters. The term "secular" is used in the preamble of the Constitution to ensure citizens' freedom of religion and to state that the state is secular and shouldn't have any involvement in personal religious matters. The Indian secularism mandates that the State treat its citizens in accordance with the principles of "*Sarva Dharm Sambhava*" and refrain from identifying with any one religion. It has been argued by some experts that have maintained that Indian society is not sufficiently developed socially to make use of the "Uniform civil code." The researcher has noted that this is because India is a large country with a variety of cultures, religions, and other factors. It is possible to argue that the enforcement of “Uniform Civil Code” would violate numerous religious customs and cultures by unnecessarily imposing State legislation.

If UCC is implemented, bringing the tribes together will be a significant task. The tribal group that still makes up a large portion of India wants to be ruled according to their customs and traditions and was granted freedom to do so. Secular procedural laws and other piece of legislation are exception in this regard

Keywords - Personal laws, State Policy, Marriage, Divorce, Inheritance, Gender Equality

INTRODUCTION

In basic terms, a “Uniform Civil Code” implies consolidating all "personal laws" into a single set of secular legislation addressing these issues, which will be applicable to all Indian citizens despite the society to which they may belong. The specifics of this Uniform Civil Code are still being worked out, but it is anticipated to incorporate the most progressive and contemporary components of all current personal laws with oldest and most primitive ones.

Uniform Civil Code is given the fourth part of the constitution of India. Uniform Civil Code is given under Article 44 of the constitution of India. Article 44 states that “The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.”¹ Article 37 of the constitution of India states that “ Directive Principles of State Policy shall not be enforceable by any court”² of law. Irrespective of that Directive Principles of State Policy play an important role in the governance of the country”. This demonstrates that while the UCC should be implemented in a specific manner, as stated by our constitution, implementing so is not necessary. Thus, there is a continuing debate about India's need for a UCC.

During the lengthy debate on Uniform Civil Code in the Constitutional Assembly, some Muslim legislators opposed the inclusion of it. Mr. B. Pocker Sahib Bahadur questioned the definition and status of the word Uniform Civil Code. Muslims were concerned about the lack of any specific legislation that could be interpreted as the norm because they did not want majoritarian law to be imposed³. Unfortunately, the need for a strong national character of the country was overshadowed by this unjustified worry. The Muslim members believed that a citizen's stringent personal law should not be included under the term "civil code." The entire purpose of this Article is that "an attempt may be made to unify the personal law of the Country as and when the Parliament thinks proper," or rather, when the majority in Parliament thinks proper. This statement minimizes the members' concerns regarding the meaning of the word UCC and the purpose of having such a provision in the Constitution. In response to concerns from the minority community regarding the UCC's provisions in the Constituent Assembly, Dr. B.R. Ambedkar, the chairman of the Drafting Committee, stated that "it was intended to have a common Code which provided for uniformity of law in matters of marriages, divorce,

¹ Article 44, The Constitution of India

² Article 37, The Constitution of India

³ Constituent Assembly Debates, Vol. VII, (1949), p. 543

succession, etc. irrespective of religion, community⁴," etc. The Constitution was enacted for the entire country, and every section and community must accept its provision and its directives, **Justice M.C. Chagla** wrote in a passionate arguments for UCC. Article 44 is a mandatory provision binding the government and it is necessary upon it to give effect to its provision.⁵

Matrimonial and familial relationships had historically been governed by the personal laws of the major religious organizations, with the government maintaining a policy of not interfering in such rules unless specific religious communities demanded a change⁸. India is a religiously diverse country. India consists of various religions such as Hindus, Buddhists, Jains, Christians, Muslims, Parsees, and Sikhs. The fundamental quality of the Indian nation is its unity in diversity. Every class or community has its own set of rules on wills, succession, adoption, marriage and divorce, and babies and minors. Individuals have the right to have their own personal laws implemented, rather than the laws that would apply in their local area, and these laws accompany each person throughout the States of India where they are a component of the national law. Within a national jurisdiction, customary and personal laws are laws that are specific to a certain group of people based on their culture or religion. They regulate family ties with regard to succession, support, and marriage and divorce. India is a secular nation where each community is free to enact its own laws.

It should be emphasized that the establishment of Uniform Civil Code in part IV of the Indian Constitution⁶, compared to any other enforceable part, was influenced by the previously mentioned two paragraphs. Although the Indian Constitution's founders recognized the value of a UCC, they were unable to include it as a required clause. During its period of independence, the Union of Indian States was a highly unpredictable union with a wide range of cultures, religions, and customs under its powerful control. If the UCC had been mandatory back then, it might have damaged the framework of Indian unity.

Secularism is a fundamental and integral concept that is established in the preamble of the Indian Constitution, which resembles democracy, socialism, unity, and the integrity of the

⁴ Constituent Assembly Debates, Vol. VII, (1949), p. 572

⁵ Chagla, M.C. *Plea for Uniform Civil Code*, Weekly Round Table, March 25, 1973, p. 7

⁶ Art 37 of the Indian Constitution makes Directive Principles of State Policy non-enforceable in the Court of law.

nation. The uniformity and regularity of a state's laws are essential; enforcing different laws solely based on religious beliefs leads to a discrepancy in this regard. People could argue that equality should only be maintained between equals, yet religion cannot be the only factor used to determine whether someone is equal or not. There is a need for uniformity in personal laws when they violate fundamental human rights or conflict with governmental objectives. Uniformity in this scenario refers to the ability of granting all citizens similar rights with regard to fundamental human rights, as protected by local laws and supported by international legal frameworks.

According to the Preamble of the Constitution, India is a democratic, republican, and secular nation. Thus, there isn't a state religion. A secular state is prohibited from treating people differently based only on their faith, religion, caste etc. A religion solely focuses on the relationship between God and humanity. It implies that a person's daily life shouldn't be impacted by their religion. The objective of maintaining a consistent civil law, such as cause and consequence, is closely linked to the secularization process. That is to say, a person's religion should only specify which God or thing he worships, not what laws apply to him. In India, laws supposed to derive from the sovereign law of the Constitution of our country rather than from religious interpretation. In **S.R. Bommai v. Union of India**⁷, **Hon'ble Justice, Jeevan Reddy** noted that religion is a matter of personal belief and cannot be amalgamated with religious activity. The State may control religion by the enactment of laws.

Secularism in India is not comparable to what is considered to be secular in United States of America and European countries. The fact that United States of America and European nations experienced the periods of renaissance, reformation, and enlightenment is one of the reasons why such comparisons are seldom made. Therefore, in the West, legislation prohibiting the state from interfering with religion may be passed. In India, however, secularism keeps spiritual practice and personal faith separated, creating a wall between religion and the state. The reason for this is that, as India has not gone through these stages, it is the State's duty to get involved in religious affairs in order to eliminate obstacles to State

The term secular is ambiguous and takes on numerous meanings depending on the situation. In the same way that a secular state cannot be a religious state, it is opposed to religion. Some believe that a secular state is anti-religious in this situation. A state that does not follow any

⁷ *S.R. Bommai v. Union of India* (1994) 3 SCC 1

religion in any way need not be anti-religious. It might be a state that honors every religion.

Despite the fact that the 42nd Constitutional Amendment introduced the word "secular" to the preamble, the Constitution has always been inspired with a secular spirit. The fundamental right such as right to equality before the law⁸ and the freedom to profess one's religion are based on this fiercely secular spirit.

Hindu personal law, including that which relates to marriage, succession, and other matters, has a sacramental basis, just as Islamic and Christian law does. It would not be incorrect to observe that, despite the Constitution's insistence on the creation of a "UCC" for the entirety of India⁹, some other communities have not abandoned their beliefs in support of national unity and integration, including Sikhs, Buddhists, and Jains.

LEGISLATIVE EFFORTS MADE BY THE GOVERNMENT

Even still, it was properly acknowledged in the Constituent Assembly that not all Hindus supported UCC. However, in Indian consciousness, UCC has always been connected to Muslim resistance. It was their belief that the laws of succession, inheritance, and the like were fundamental to their religion. If such became true, Indian women would never be granted the same rights as males as guaranteed by Article 14 of the Constitution. Article 15(1) states that "no citizen shall be subjected to discrimination by the State on the basis of religion, race, caste, sex, and place of birth or any of them¹⁰." Hindus are comparatively more interesting to accept modern

uniform civil code. Various laws have been legislated from British era till date, the most recent Amendment has been done in the Hindu succession Act, with respect to the Coparcenary Property.

- **DURING BRITISH PERIOD:-**

Indian Succession Act 1865, which was one of the first laws to ensure women's financial security, tried to move the personal laws to the domain of civil law. Reform for Christian marriages was introduced by the Marriage Act of 1864. Laws such as the Hindu Widow

⁸ Art 14, The Constitution of India.

⁹ Smt. Sarla Mudgal, President, Kalyani and others v. Union of India and others, AIR 1995 SC 1531

¹⁰ M.P. Jain, Indian Constitution Law 904 (5th Ed., Wadhwa And Company Nagpur New Delhi 2008)

Remarriage Act of 1856, the Married Women's Property Act of 1923, and the Hindu Inheritance (Removal of Disability) Act of 1928 were introduced with the intention of protecting women.

The first Special Marriage Act was passed in 1872, granting Indian citizens another choice, a civil marriage. Because it only applied to Hindus and required those engaged to leave their religion, it had a limited scope. Hindus, Buddhists, Sikhs, and Jains were allowed to marry in accordance with their own personal laws according to the later Special Marriage (Amendment) Act, 1923.

AFTER BRITISH PERIOD:-

HINDU CODE BILL:-

This law was created to establish a common civil code, as desired by Jawaharlal Nehru, the first prime minister of the Indian republic, as well as his supporters and female members. The Hindu bill itself drew greater criticism, with the primary points of contention being those pertaining to divorce, monogamy, the taking away of women's rights as coparcenaries, and succession to daughters.

The Hindu Code Bill was unable to stop the widespread prejudice against women. The laws pertaining to divorce granted equal rights to both parties; however, men are mostly responsible for introducing these rules. The Act solely applied to Hindus, therefore women from other communities continued to be under subordination. For example, Muslim women were not allowed to inherit land used for agriculture under Sharia Law. Although first Prime Minister Pandit Jawahar Lal Nehru acknowledged that the bill was not perfect, he was hesitant to make significant changes that may agitate particular communities. Although he acknowledged that there were no significant changes, he nevertheless thought it was a "outstanding achievement" for the time.

Any Indian citizen, irrespective of their religion, is able to get into a civil marriage under the Special Marriage Act of 1954, allowing Indians to marry outside of their religion. All of India was subject to the law, with the exception of Jammu & Kashmir. The act was almost identical to the Hindu Marriage Act of 1955 in various respects.

Muslims were able to marry under the *Special Marriage Act 1954*, and keep the protections that were normally advantageous to Muslim women but were absent from the personal law. This act prohibited polygamy and substituted the relevant Muslim Personal Law with the Indian Succession Act, which would control inheritance and succession.

Since the passage of Hindu Code Bill's passage, there were two main groups to which Indian personal laws applied: the general public and the Muslim community, whose rules were exempt from modification. Until the *Shah Bano case in 1985*, there were fewer instances of conflict between secular and religious authorities concerning the common civil code. The 73-year-old Bano asked her husband, Muhammad Ahmad Khan, for maintenance. After forty years of marriage, he had granted her a unilateral divorce by *Tripple Talaaq* (saying "I divorce you" three times) and refused regular maintenance; this type of divorce was legal under Muslim personal law. In 1980, a local court delivered a ruling granting her maintenance. Muhammad Ahmad Khan, a lawyer in his individual right, appealed this ruling to the Supreme Court, claiming that he was complying with all of his legal duties under Islamic law. Under the Criminal Procedure Code's "maintenance of wives, children, and parents" provision (Section 125), which applies to all citizens despite their religion, the Supreme Court cleared her in 1985. It is also recommended that a UCC be established. In addition to her situation, two other Muslim women had already gotten support under the Criminal Procedure code between 1979 and 1980.

A Muslim parliamentarian who is independent put forward a bill in the parliament to safeguard their personal law. In 1986, the Muslim Women's (Protection of Rights on Divorce) Act came into force, providing maintenance under Criminal Procedure Code Section 125, which did not apply to Muslim women.

ADVANTAGES OF UNIFORM CIVIL CODE

- ***GIVE EVERY CITIZEN EQUAL STATUS***

A uniform civil and personal law must exist in a secular democratic republic to grant its citizens equal status regardless of their gender, class, caste, place, race, religion etc.

- ***ENCOURAGE GENDER PARITY***

It is often known that men are given top preference in almost all religions when it comes to

succession and inheritance, which leads to prejudice against women. As a result, the Uniform Civil Code will encourage gender parity and equality for men and women.

- ***SUPPORT NATIONAL INTEGRATION***

In a court of law, every citizen of our country is given the same treatment regardless of whether they are subject to criminal or other civil laws (personal laws excluded). As a result, the Uniform Civil Code will give every people access to an equal set of personal laws, ending the politicizing of issues related to discrimination, concessions, or, inversely, extraordinary benefits appreciated by a particular community based on their unique religious personal laws.

DISADVANTAGES OF UNIFORM CIVIL CODE

- ***Concrete Challenges Related To India's Diversity***

Establishing a unified set of norms for personal matters, such as marriage, is challenging in India because of the vast diversity of Indian culture, which includes religions, sects, castes, race, place of birth etc.

- ***The Uniform Civil Code Viewed as a violation of religious freedom***

The Uniform Civil Code has been criticized by many communities, particularly the minority ones, as an infringement on their right to freedom of religion. They claim that their customs would be disregarded by the Uniform Civil Code, which will instead impose laws mostly shaped by the majority religious communities.

- ***Interference Of State In Personal Matter***

The Indian Constitution's Articles 25 to 28 provide the freedom of religion. However, the Uniform Civil Code's implementation will narrow the extent of religious freedom.

- ***Tough and Sensitive Work***

Adopting implementation of marriage, maintenance, adoption, and succession with the idea that one community should ensure benefits from others, as well as issuing legal decisions that ensure gender equality. All of these changes make the implementation of the Uniform Civil Code a sensitive and difficult task. The government must handle minority and majority groups with compassion and objectivity, as this is an extremely difficult the task that could result in even more devastating outcomes like riots and inter-communal violence.

- ***Time not yet suitable for this reform:-***

Despite the strong resistance from the Muslim minority in India, there are conflicts over love jihad, saffronization of educational institutions, and beef. As a result, the community needs a sufficient period to be infused with confidence; otherwise, they would grow increasingly insecure as well as susceptible to being drawn to extreme ideas.

JUDICIAL INTERPRETATION WITH RESPECT TO UNIFORM CIVIL CODE AND SECULARISM

Despite more than 50 years since the Constitution was drafted, the UCC objective stated in Article 44 has not yet been accomplished. However, attempts in this area persisted, as seen by the Supreme Court's judgment.

- "It is also a matter of concern that Article 44 of our Constitution has remained a dead letter," the Supreme Court declared in ***Muhammad Ahmed Khan v. Shah Bano Begum***¹¹ popularly known as the ***Shah Bano's case***. Muslim women would be entitled to maintenance if the amount they received as "dower" under personal law was insufficient for their subsistence, despite section 127 of Cr.P.C. 1973, which states that if a woman has received an amount under personal law, she would not be entitled to maintenance under section 125 of Cr.P.C 1973 after divorce. Despite strong criticism from Muslim fundamentalists, the ruling was regarded as a liberal reading of the law that was necessary for gender equality. Later, the Muslim women's (Protection of Rights on Divorce) Act, 1986 was passed by the Central Government in response to pressure from Muslim fundamentalists. This act denied Muslim women the right to maintenance under section 125 of the Criminal Procedure Code. It was properly criticized by the activists as "certainly a regressive step." That further demonstrated how women's rights are not given much emphasis, especially in India, a secular state. This led to the strengthening of religious institutional sovereignty above women's rights¹².
- In the landmark judgement of ***Sarla Mudgal and others v. Union of India and others***¹³, Kuldeep Singh, J. held that "Ongoing governments have been entirely negligent in their duty of implementing the Constitutional mandate under Art. 44."

¹¹ *Mohammad Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556.

¹² Kumar Virendar, *Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas(2000)]* 42 Journal of Indian Law Institute 315 (2000).

¹³ *Sarla Mudgal (Smt.), and others v. Union of India and others* AIR 1995 SC 1531

He also directed the Government to implement the directive principles of state policy given under Article 44 and to file an affidavit illustrating the steps taken in the matter. As a result, the Supreme Court asked the Indian government, acting through the Prime Minister of India, to revisit Article 44 of the Indian Constitution and work on securing a UCC for all Indian citizens.

- Connection" in a civilized society between religious and personal laws, and The Supreme Court upheld the validity of Sections 3 and 4 of the Muslim Women (Protection of rights on Divorce) Act, 1986, declaring that they did not violate Articles 14, 15, and 21 of the Indian Constitution in *Danial Latifi and Others v. Union of India*¹⁴. The Muslim wife is not entitled to maintenance under section 125 of the Cr.P.C. since, according to section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986, her Muslim husband is required to provide reasonable and equitable provisions for the future of the divorced wife, including maintenance. A divorced Muslim woman who is unable to maintain herself after the iddat period may file a maintenance claim against her relatives or the Wakf Board under section 4 of the Act.
- Concerned about the disparities in marriage laws across different religions, the Supreme Court in *John Vallamattom v. Union of India*¹⁵, a Public Interest Litigation brought by a Christian Priest and other Christian community members, contested the constitutionality of section 118 of the *Indian Succession Act, 1925*, and struck it down as a violation of article 14 of the Constitution. This historic ruling highlighted the need for a uniform civil code by Parliament. A three-judge bench emphasized that there was no "necessary regretted that Article 44 of the Constitution which allowed the state to "Endeavour" to secure a UCC for its citizens across India had not been impacted. The Court continued on to argue that "Parliament must continue to intervene to frame a UCC for the Country. By eliminating the ideological contradictions, a UCC can promote the cause of national integration.
- *Shayra Bano v. Union of India*¹⁶, The Supreme Court banned the Talak-ul-Biddat practice in a relatively recent ruling, merging six petitions related to the case. In terms of their fundamental human rights and the equality that the Indian

¹⁴ *Danial Latifi and another v. Union of India* (2001) 7 SCC 740

¹⁵ *John Vallamattom v. Union of India* 2003 (5) SCALE 384.

¹⁶ *Shayra Bano v. Union of India* Writ Petition [C No. 118 of 2107

Constitution guarantees, Muslim women have achieved. However, the ruling cannot be strictly interpreted in favor of UCC. The reasons why this particular kind of Talak has mostly been an optional and forbidden practice according to the relevant Muslim holy texts. The bench did not address the issue of a constitutionally specified infringement of a fundamental right alone. In general, the response to the question of whether a personal legislation can violate a citizen's fundamental right is none. In presence of such court precedent, each personal law provision must be examined in detail, and not just in relation to the relevant religious scripture but also in light of the Constitution.

RECENT DEVELOPMENT

The Uniform Civil Code (UCC) of Uttarakhand Bill, 2024 was passed by the Uttarakhand Legislative Assembly with the intention of unifying the laws relating to marriage and property inheritance. To become law, the Bill simply needs the President's approval. The Bill's required registration of live-in relationships, which criminalizes them if certain requirements are not satisfied, is a worrying aspect. This action calls into question the state's authority to control interpersonal relationships in addition to violating individual autonomy.

CONCLUSIONS

The implementation of Uniform Civil Code is a difficult process but it is possible. Dr. B.R. Ambedkar's Council propounded a central path which discussed that it is perfectly possible that future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.

The term "secular" is used in the preamble of the Constitution, which also states that as the state is secular, it is not allowed to intervene in matters pertaining to an individual's religion. However, since religion is a matter of personal faith that cannot be mixed with secular activities and can be regulated by the State through the enactment of laws, as the Supreme Court has already held in the case of *S.R. Bommai v. Union of India*, we can state that individual rights do not affect the unity and integrity of India.

Individuals' fundamental rights are violated by the Uniform Civil Code of **Uttarakhand Bill**,

2024, which mandates the registration of live-in relationships and may even make them illegal. The Bill disregards the distinctive characteristics of partnership by eliminating the distinction between it and marriage. Couples are not only made to feel less confident by this action, but their right to privacy and autonomy is also infringed. A democratic society must prioritize the values of equality, privacy, and autonomy over the enactment of arbitrary restrictions on relationships.

Thus, it can be concluded by stating that the UCC amounts to equal laws for all sections of society. All the people of India must be governed by one set of laws. For National unity and integrity, and for secularism, UCC is necessary.

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