
SOCIO-LEGAL PERSPECTIVES IN ENACTMENT OF UNIFORM CIVIL CODE IN INDIA FOR HARMONIZING DIVERSITY

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The Uniform Civil Code has been a topic of significant debate within the Indian socio-legal framework. Article 44 of the Constitution, a directive principle, mandates the state to implement a Uniform Civil Code. Despite numerous directives from the Supreme Court, the UCC remains unimplemented due to excessive politicization. In the absence of uniform personal laws for matters like marriage, divorce, and adoption, different religious communities follow their own laws derived from religious texts and customs, which often result in gender discrimination. This paper aims to balance the Right to Freedom of Religion and the Right to Equality by distinguishing between 'essential religious practices' and 'secular activities'. A gradual and well-informed approach, particularly aimed at minorities, is necessary for enacting a Uniform Civil Code. The debate around the UCC is complex, involving issues of gender equality, individual rights, religious freedom, and social justice

Keywords: Uniform civil code, Socio-legal, diversity, Enactment, Article

1. INTRODUCTION

The UCC aims to replace the current personal laws, which are based on religious scriptures and customs, with a unified set of laws for all citizens, achieving legal uniformity within diversity. It seeks to uphold the constitutional ideals of equality, as outlined in Articles 14 and 15 of the Indian Constitution, irrespective of religion, caste, or gender. However, the implementation of a UCC faces varying levels of acceptance and resistance due to concerns about its impact on cultural and religious autonomy. This complex interaction of law, religion, and society in the UCC debate is the focus of our submission, which explores its advantages and disadvantages while attempting to reconcile differing viewpoints (Malik., 2024).

India is a highly diverse country with a wide array of traditions and religions. This diversity is reflected in the country's legal system, which incorporates rules and regulations that consider religious beliefs. Various religions, including Hinduism, Islam, Christianity, Sikhism, and Buddhism, have their own distinct personal laws governing matters like marriage, divorce, inheritance, and adoption. These laws are based on religious scriptures, customs, and practices that differ significantly from one another. The legalization of these diverse practices is rooted in the Constitution of India, specifically Article 25, which declares India a secular nation. This article ensures that everyone is free to practice their religious beliefs and prohibits discrimination on religious grounds (Waza., 2023).

The concept of the UCC is outlined in Article 44 of the Indian Constitution, which is part of the Directive Principles of State Policy. While these principles are not legally enforceable, they are considered fundamental to the governance of the country and guide the creation and interpretation of laws. The UCC aims to consolidate personal laws into a common civil code applicable to all citizens, regardless of religion, caste, or community. The primary goal is to promote equality, unity, and integrity, ensuring that all citizens are treated equally under the law, thereby fulfilling the mandate of the Indian Constitution (Malik., 2024).

2. HISTORICAL BACKGROUND OF UCC

The evolution of civil laws in India is closely connected to the history of personal laws. Lord Warren Hastings supported categorizing identities strictly under the 1772-73 Regulation Act, which decreed that Hindus and Muslims should be governed by their own laws (Menon 1998: 48). In 1835, the British Government presented a report emphasizing the need for uniform codification of Indian laws related to crime, evidence, and contracts, while explicitly recommending the exclusion of Hindu and Muslim personal laws from this codification. These personal laws remained uncoded to segment the diverse population along religious lines and to develop a judicial system responsive to the prevailing social conditions, mainly serving the imperial objective of exerting greater control over Indian territory (Agnes 2011).

Many members of the Constituent Assembly disliked this debate, with significant opposition from Muslim members who believed that the Uniform Civil Code (UCC) was detrimental to the religious and cultural ethos of Indian society. Mohammad Ismail, a member of the Madras legislative assembly, contended that adhering to one's personal laws was a fundamental right and an integral part of one's way of life. While addressing the assembly, he stressed the need to add a provision to Article 35 that would reflect this viewpoint, "Provided that

any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law” (The Constitution of India 1949).

However, many members supported the Code. Raj Kumari Amrit Kaur, co-founder of the All India Women’s Conference in 1927 and the first female Cabinet Minister in free India, championed a common code and marriage equality for women. She argued that a uniform code would safeguard women from discriminatory personal laws and should therefore be established as a justiciable right (R Kruthika 2018). K. M. Munshi, also known as Ghanshyam Vyas and founder of the educational trust Bhartiya Vidya Bhawan, shared the view that personal laws discriminated against citizens based on their sex, which was unconstitutional (Constituent Assembly Debates 1948). Dr. B. R. Ambedkar, a strong proponent of uniformity in civil laws, regarded social reform as the paramount duty of Indian lawmakers. He defended the state's right to intervene in personal laws, asserting that a uniform code would establish the 'power' to govern those who consent to it, rather than an obligation. (Constituent Assembly Debates 1948)

The Uniform Civil Code (UCC) was first included in the Bharatiya Janata Party’s (BJP) election manifesto in 1996 and has been promoted as a means to ensure gender equality. The issue resurfaced when the Uttarakhand Government passed a proposal to implement the UCC in its first cabinet meeting under newly elected Chief Minister Pushkar Singh Dhami. He stated that this move was in line with his pre-election promise and announced the formation of a committee of experts to draft the UCC. In 2023, with the BJP in power at the center, Prime Minister Narendra Modi signaled his support for UCC on June 27th, speaking in favor of its implementation and criticizing opposition parties for allegedly inciting opposition among minority communities. Following the Prime Minister's speech on June 27th, Union Law Minister Arjun Ram Meghwal held a meeting with Union Home Minister Amit Shah, attended by the law secretary as well. In an interview with Economic Times, Meghwal stated, "Whatever the PM said on UCC is as per the Constitution and is mentioned in Article 44." These developments occurred as representatives from the Law Commission and the Law Ministry were invited to a hearing by the Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice on July 3, 2023, to discuss the Law Commission's notice requesting comments on the UCC from stakeholders. The government plans to introduce the UCC during the parliamentary Monsoon session in August 2023. It has become crucial to understand the UCC and the significant emphasis behind its implementation (Gupta et al., 2024).

3. SOCIO-LEGAL PERSPECTIVES IN ENACTMENT OF UNIFORM CIVIL CODE IN INDIA

1. Potential conflict arising from the imposition of uniform civil code in India

Below are some of the potential conflicts that will arise from the imposition of uniform civil code in India. Religious sensitivities: Opposition from religious groups. Imposition of uniform civil code may phase strong opposition from different religious groups who see it as an intrusion into their religious autonomy and practices. They argue that personal laws that are based on their religious scriptures and traditions are an integral part of their religious identity and should be protected as a fundamental right. Resistance to change: some religious communities may resist any attempt that can modify their personal laws, fearing that it would harm and dilute their religious practices. they can view uniform civil code as and potential threat to their identity and religious traditions. Gender Justice: The attempt to change certain personal laws that have been criticized for discrimination against women such as marriage, divorce and inheritance through uniform civil code may face resistance from conservative sections of the society who argue to preserve the pure traditional gender roles and practices. Cultural differences: India is a very rich cultural diversity which is reflected in various customary practices associated with different religious communities. Imposing upon them a uniform civil code may clash with these practices and can potentially lead to resistance and cultural conflicts. As different sections of the societies strive to safeguard their unique customs and tradition.

2. Promotion of National Unity and Integration with UCC

Advocates for the introduction of a UCC in India posit that it could significantly enhance national unity and integration, underlining the principle of 'one nation, one law.' By creating a common legal framework, the UCC could establish a uniform set of laws applicable to all citizens, regardless of their religious or cultural backgrounds. This uniformity in civil laws could instill a shared sense of citizenship and unity among all Indians. This approach, which involves uniform application of laws without considering religious or social affiliations, could engender a greater sense of national integration (Ghosh., 2018). Moreover, the UCC could play a critical role in reducing religious discord and communal tensions, which often stem from varying personal laws across different religious communities. By replacing these disparate personal laws with a unified legal code, it's possible to minimize the chances of inter-religious conflicts, thereby fostering social harmony and integration.

Furthermore, implementing a UCC could underline India's commitment to secularism, a crucial aspect of the Indian Constitution. By ensuring that civil laws remain separate from religious laws, the state can emphasize its neutrality towards all religions, bolstering the principle of unity in diversity. Promotion of Gender Justice and Women's Rights One of the most prominent arguments in favor of the UCC in India is its potential to promote gender justice and enhance women's rights, particularly among communities where traditional personal laws may be seen to disadvantage women. The UCC aims to establish a uniform legal framework applicable to all citizens, irrespective of their religious or cultural backgrounds. This uniformity could help to ensure that all women, regardless of their religious affiliation, have access to the same rights and legal protections. The UCC could thereby contribute significantly to the promotion of gender justice in India (Raju., 2019). Particularly it can address the concerns related to unequal treatment given to Muslim women under the Muslim personal law

Potential to Simplify the Legal System and Ensure Equality before the Law The implementation of a UCC in India carries with it the potential for significant legal simplification and a greater assurance of equality before the law. The current system of personal laws, being derived from a multitude of religious and cultural traditions, can often be complex and challenging to navigate. A UCC would offer a uniform set of laws applicable to all citizens, irrespective of their religious or cultural background, thereby potentially simplifying the legal system (Ratnaparkhi., 1997). The preceding section has already identified some ways wherein the UCC can reform the Muslim personal law and provide better treatment to Muslim women. In this section, some deviations even in Hindu law based on customs are discussed.

Cons of Implementing a UCC in India In furtherance to the third research question, this section discusses in detail some of the drawbacks and concerns related to the implementation of UCC in India. Potential Threat to Cultural and Religious Diversity The implementation of UCC in India, despite its potential benefits, raises concerns about possible threats to the country's rich cultural and religious diversity. These concerns predominantly stem from the fear that a UCC might homogenize personal laws and thereby compromise the unique customs and traditions of different religious and ethnic communities (Sambhavi., 2017). There is a fear that the UCC could lead to cultural homogenization and loss of cultural diversity, given its intent to provide a standardized set of laws for all citizens. The existing system of personal laws allows various communities to preserve and practice their distinct customs and traditions, which form an integral part of their cultural identities.

3.3 Empowerment of Women in India through Uniform Civil Code: Issues and Challenges

For a long time, women have had to struggle to break through the boundaries that have existed for ages and to enter male-dominated spaces. Historical records indicate that women in ancient India enjoyed a privileged position. However, with the advent of new religious traditions and their corresponding personal laws, women's status declined, pushing them to the margins of society. Gender inequality in personal laws further degraded their societal standing. To improve their position, the British introduced reforms, including legislation to outlaw sati and restrict child marriage. During the Constituent Assembly debates, members discussed implementing a common civil code to eliminate religious and gender-based disparities. However, it was placed under Part IV of the Constitution, with the hope of enforcement under favorable future conditions. Despite these efforts, obstacles to women's emancipation persist. They continue to battle long-standing barriers and struggle to enter male-dominated areas. The primary issues women face include ongoing crimes against them, lack of decision-making authority, restricted freedom of movement, limited access to education, employment opportunities, and media exposure (Mishra., 2014).

In India, several factors contribute to the complexity of issues concerning women's rights, and addressing these issues would immediately benefit women's empowerment:

- Inequality in personal laws, particularly concerning marriage and property rights, has subjected women to harsh treatment, perpetuating a stigma on their status.
- Illiteracy prevents women from participating in traditional and modern sectors such as agriculture and business. Educational attainment among women in rural areas progresses slowly, and not all women have equal access to education.
- Many women are unaware of their legal rights and regulations that could enhance their personal status. Even when aware of rights related to succession, marriage, and family, they often choose not to exercise them due to traditional dominance exerted by male family members such as parents, husbands, and elders. Cultural attitudes play a significant role in how these issues manifest.

- Gender inequality in India has significantly hindered the country's progress, necessitating concerted efforts across all religious communities to achieve meaningful change. Women's equality remains more of a personal achievement than a societal one, as not all women are treated equally in terms of power, employment opportunities, and education. Despite legal provisions for equal rights on paper, women face limited employment options and inadequate protection from exploitation in the workplace. Gender inequality manifests in various forms, including social stereotypes, domestic violence, and discrimination against girls and women in many parts of the country (Mayoux., 2003).
- Another critical issue is the deficiencies within the judicial system, characterized by lengthy legal procedures and operational challenges. Despite existing secular laws aimed at protecting women's fundamental rights, the delayed court processes often deny them timely justice.
- Although child marriage is prohibited in India, many girls still marry before the legal age of eighteen. Efforts by both government and non-governmental organizations have not bridged the substantial gap between those who are protected by law and those who are not. Patriarchal mindsets entrenched in age-old customs continue to pose a significant challenge to achieving gender equality.
- Social pressure from families often prevents women from seeking justice through secular laws, as they are bound by traditional customs and rituals. Despite the passage of 73 years since the enactment of the Constitution of India, the aspiration for a common civil code remains unfulfilled, with its placement under Part IV as directive principles that are not enforceable by courts. However, there is increasing societal awareness and consensus on the need to emancipate and empower women so they can contribute effectively to the welfare and progress of society.
- To build a sustainable society, it is crucial to uplift the dignity of women and empower them, ensuring they have equal opportunities and rights in all aspects of life (Malik., 2023).

4. ENACTMENT OF UCC

1. Strategies for a Balanced Implementation of UCC

The complex issues related to the implementation of UCC discussed in the preceding sections highlight the need to reconcile UCC with the religious freedoms and cultural identities of India's diverse population. The fourth research question investigates the possible ways and means to reconcile UCC with India's religious and cultural diversity. It is to be kept in mind that any drastic or sudden implementation of UCC in India could prove to be problematic and counter-productive. Implementing a UCC in India, considering the country's diverse religious and cultural fabric, would require a delicate balance of various considerations. The recommendations and strategies that could facilitate a balanced implementation. It is important to remember that the goal of the UCC is to unite the country under a common legal framework that respects diversity and guarantees equality, and this should be communicated clearly to all communities, including religious minorities

2. Uniform civil code and conflicts of personal laws

The customs, social practices, and religious interpretations of these communities, as observed in their personal lives, are deeply rooted in the religion they were born into and practice. Several codified personal laws govern aspects such as marriage, divorce, property, and inheritance:

- The Indian Christian Marriage Act of 1872 (applicable throughout India except in the erstwhile regions of Travancore-Cochin, Manipur, and Jammu & Kashmir)
- The Cochin Christian Civil Marriage Act of 1920 (applicable in the Travancore-Cochin areas)
- The Anand Marriage Act of 1909 (for Sikh marriages)
- The Muslim Personal Law (Shariat) Application Act of 1937 (applying Shariat laws to Indian Muslims)
- The Parsi Marriage and Divorce Act of 1937
- The Hindu Marriage Act of 1955 (applicable not only to Hindus but also to Buddhists, Jains, and anyone who is not a Muslim, Christian, Parsi, or Jew and not governed by any other law)

Two scenarios need to be discussed to determine the conflicts: a) Personal laws, whether codified or customary, that conflict with the provisions of Part III of the Indian Constitution, and b) Conflicts arising from personal laws that aim to reform existing laws deemed arbitrary and unconstitutional in relation to Article 25 of the Indian Constitution. The Indian judiciary, as the protector of the Constitution, faces a dilemma in addressing the interrelation between personal laws and Part III of the Constitution. A landmark judgment that sheds light on this dilemma is the *Narasu Appa Mali* case. In this case, the constitutionality of the Bombay Prohibition of

Bigamous Marriage Act 1946 was challenged based on Articles 14, 15, and 25 of the Indian Constitution. The major issues in the case included: a) Whether the personal laws of Hindus are considered "law" within the meaning of Article 13(3)(b) and Article 372(3), Explanation 1, and b) Whether altering the personal law of one religious community without similar changes in others' personal laws violates the principle of equality under the law

4.3 Necessity of UCC

4.3.1 The promotion of genuine secularism is encouraged

India currently practices selective secularism, where secular principles are applied in some areas but not in others. A uniform civil code in India would apply the same legal provisions to all citizens, regardless of their religious affiliations, including Hindus, Muslims, Christians, and Sikhs. This seems to be a reasonable and non-religious perspective. Implementing a uniform civil code does not restrict individuals' religious freedom but ensures equal treatment for everyone, exemplifying true secularism.

4.3.2 It is essential to ensure equal treatment for all Indian citizens

Currently, India's personal laws are influenced by specific religions, allowing practices like multiple marriages for Muslims, while Hindus and Christians face legal consequences for the same actions. This does not align with the principle of equality. All Indians should be subject to the same laws regarding marriage, inheritance, family, and land to guarantee equal treatment for everyone in India (Harshith., 2024).

4.4 Advantages of implementing a uniform civil code

Implementing and enforcing a Common Civil Code would yield several benefits. Firstly, it would promote national integration and accelerate this process. Secondly, it would eliminate overlapping provisions within the legal system. Thirdly, it would decrease litigation stemming from personal laws. Additionally, it would foster a sense of unity and national identity, thereby bolstering the nation. Ultimately, this would equip the country with the strength and resilience needed to combat communal and divisive forces.

Global perspective on the adoption of a uniform civil code: Countries like Israel, Japan, France, and Russia have strengthened their national cohesion through a robust sense of unity, a quality that we have yet to fully develop and propagate. Many nations have either a uniform civil code or uniform laws governing civil and criminal matters. European countries and the United States have established secular laws that are uniformly and impartially applied to all citizens, irrespective of their religious affiliations. Islamic countries adhere to a uniform legal system based on Sharia law, applied universally regardless of individuals' religious backgrounds.

Regarding the Uniform Civil Code (UCC), there is a lack of awareness among the populace, particularly among minorities. Many people misunderstand the code, fearing that its enactment would force them to adopt the religious practices of the majority, thereby losing their identity. Therefore, the first step should be to educate people about the true meaning and scope of the UCC. A Commission should be established to define the code's scope and extent, and the Parliament should draft a code specifying its contents. This code should differentiate between essential religious practices and secular activities related to religion. Only financial activities or secular matters like maintenance and inheritance should be regulated by the State, not religious or customary practices like saptapathi or nikah. This ensures that one community's religious practices are not imposed on another. Provisions regarding marriage validity should include age requirements, marriage registration, and so forth. Minorities should be assured that their Right to Religion will not be infringed upon. The draft should then be made available for public opinion, and nationwide campaigns and discussions should be conducted. After considering the Commission's viewpoints, the Parliament should enact a code applicable across the country, regardless of religion, race, caste, or creed (Pachauri., 2016).

5. HARMONIZING DIVERSITY

There are different ways being considered to address the legal and social issues related to personal laws, instead of having a single uniform civil code for everyone these alternatives take into account that diverse religious and cultural traditions in India and aim to promote fairness, equality and social harmony. Here are some alternatives.

1. Reform and Harmonization of personal laws

Instead of a uniform civil code the approach should be to impose and make the existing personal laws consistent with each other. This involves change in the existing laws to address unfairness towards certain gender and discriminatory practices. The goal should be to ensure equal rights for individuals in areas like marriage, divorce, inheritance and property ownership.

2. Selective implementation of reforms

This alternative suggests implementing changes in areas where there is widespread agreement, while allowing communities to maintain their own personal laws, in other aspects this allows for gradual change while respecting the diversity of personal laws.

3. Community mediation

Various communities in India have their own customary practices for resolving disputes and family matters. Alternative way of resolving conflicts such as community mediation, can be encouraged to solve any specific problem within specific communities. This approach ensures fairness and upholders constitutional principles while respecting the cultural practices of different sections of the society.

4. Legal pluralism

Legal pluralism means recognising and accommodating different legal traditions. under this approach individuals of different societies have the freedom to choose the legal system they want to follow based on their religious or cultural beliefs. It respects the diversity of Indian society and allows individuals to resolve legal matters while adhering to constitutional principles.

5. CONCLUSION

Since ancient times, India's diverse society has been governed by personal laws encompassing civil rights such as marriage, property, maintenance, adoption, and more. However, these laws have often reflected a patriarchal mindset, shaping customs and traditions that perpetuate unequal entitlements to civil rights, particularly disadvantaging women. The framers of the Indian Constitution endeavored to introduce uniformity in civil matters to uplift the status of women and eliminate gender-based inequalities. Despite these efforts, the implementation of a uniform civil code has faced challenges. Pressure persists to move towards nationwide implementation of a uniform civil code, which would act as a comprehensive framework to facilitate robust legislation based on a common set of laws, promoting gender equality. It is crucial to ensure that while religious communities may have their own norms, the legal system remains accessible to make incremental advancements in women's rights.

The discourse on the UCC in India presents a complex interplay of legal, social, and cultural dimensions. To highlight the complexities associated with the implementation of UCC in India, the author had framed four research questions. The first research question had sought to examine the legal complexities associated with the adoption of UCC. The examination revealed that the adoption of the UCC is fraught with complex legal challenges, largely due to India's historical attempts at codifying personal laws and the strong resistance from various religious communities. The UCC's implementation is complicated by the diverse and pluralistic nature of Indian society, where personal laws are deeply intertwined with religious and cultural identities. The historical resistance to codification reflects the difficulties in reconciling the demand for uniform civil laws with the preservation of cultural and religious diversity.

REFERENCES

1. Maggu, R. (2022). Uniform Civil Code: Critical Analysis. *Jus Corpus LJ*, 3, 158.
2. Waza, A. M. (2023). Implementation Challenges and Potential Evils of Uniform Civil Code in India: A Multidimensional Analysis.
3. Malik, T. (2024). Unity in Diversity: Navigating the Path towards UCC in India. *International Research Journal of Multidisciplinary Scope (IRJMS)*, 5(2): 143-153
4. Gupta, S., Jain, I. B., Jagdeep, M., Verma, M. P., Singal, M. D., Beri, M. A., ... & Singh, M. K. (2024). Uniform Civil Code In India: Analyzing Challenges, Reasons And Prospects. *Educational Administration: Theory and Practice*, 30(4), 6538-6544.
5. Agnes, F. (2011). *Family Law: Volume 1: Family Laws and Constitutional Claims*. Oxford University Press.
6. Dahiya, R. (2021). *Gender Justice in India: Outlook on Uniform Civil Code*. Curated Vioces.
7. Constitution of India. (2018). R, Kruthika. (2018). "Assembly Member of the Week: Rajkumari Amrit Kaur." *Constitution of India*, 5 February 2018. Accessed July 11, 2024, https://www.constitutionofindia.net/blogs/assembly_member_of_the_week__rajkumari_amrit_kaur
8. Mishra, A. D. (2014). Women empowerment: issues and challenges. *Indian journal of public administration*, 60(3), 398-406.

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9. Mayoux, L. (2003). Women's empowerment and participation in micro-finance: evidence, issues and ways forward. *Sustainable Learning for Women's Empowerment: Ways Forward in Micro-Finance*, New Delhi, Hardbound, 1-43.
 10. Malik, M. (2023). Uniform Civil Code: A Step Towards Women Empowerment. *Innovative Research Thoughts*, 9(2), 76-82.
 11. Raju, G. N. (2019). The Muslim Women (Protection of Rights on Marriage) Act 2019. *YB Islamic & Middle EL*, 20, 304.
 12. Ghosh, P. S. (2018). *The politics of personal law in South Asia: Identity, nationalism and the uniform civil code*. Routledge India.
 13. Ratnaparkhi, M. S. (1997). *Uniform civil code: An ignored constitutional imperative*. Atlantic Publishers & Dist.
 14. Shambhavi. *Uniform Civil Code: The Necessity and The Absurdity*. *ILI Law Review*. 2017;1:12–29
 15. Harshith Sai., (accessed on 2024). *Harmonizing Diversity: An Overview of the Uniform Civil Code in Law*. legalserviceindia.com/legal/article-12806-harmonizing-diversity-an-overview-of-the-uniform-civil-code-in-law.html
 16. Pachauri, S. (2016). *UNIFORM CIVIL CODE IN INDIA: A SOCIO-LEGAL PERSPECTIVE*.