

## UNIFORM CIVIL CODE AND ITS APPLICABILITY IN THE INDIAN CONTEXT

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### ABSTRACT

The Uniform Civil Code (UCC) remains one of the most debated and significant legal propositions in India, rooted in the constitutional vision of equality, justice, and national integration. Enshrined in Article 44 of the Directive Principles of State Policy in the Indian Constitution, the Uniform Civil Code (UCC) seeks to replace personal laws based on religious doctrines with a single, uniform set of laws governing civil matters such as marriage, divorce, inheritance, and adoption applicable to all citizens, regardless of their religion or community. While the goal of legal uniformity aims to ensure gender justice and uphold the secular character of the nation, its implementation continues to face considerable challenges due to India's pluralistic and diverse socio-religious landscape.

Despite efforts to modernize certain aspects of these laws, especially within Hindu and Muslim personal laws have remained largely uncodified, resulting in significant disparities in the rights and protections available to individuals, particularly women. The judiciary in India has played a pivotal role in highlighting the need for a Uniform Civil Code (UCC) through landmark judgments such as *Mohd. Ahmed Khan v. Shah Bano Begum*, *Sarla Mudgal v. Union of India*, and *Shayara Bano v. Union of India*. These cases brought attention to discriminatory practices in personal laws and emphasized the need to align them with constitutional values like equality and justice. However, judicial pronouncements alone have not been sufficient to bring about legislative action on the Uniform Civil Code (UCC).

Arguments in favour include its potential to promote gender equality, protect individual rights, and foster national unity by eliminating legal distinctions based on religion. Supporters contend that it would provide equal treatment under the law for all citizens and serve as a crucial step toward a truly secular state. On the other hand, opponents argue that it could infringe upon the right to religious freedom guaranteed under Article 25 of the Constitution.

This article examines the historical, constitutional, and socio-legal dimensions of the Uniform Civil Code (UCC), focusing on its applicability in the Indian context.

### Introduction

The Uniform Civil Code (UCC) refers to the proposal to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of laws governing every citizen. These personal laws cover areas such as marriage, divorce, maintenance, inheritance, guardianship, and adoption. The Uniform Civil Code (UCC) seeks to ensure that all citizens of India are treated

equally under the same civil laws, regardless of their religious affiliations.

The principle behind the Uniform Civil Code (UCC) is rooted in the vision of the Indian Constitution, which aspires to establish a secular, democratic, and egalitarian society. The inclusion of Article 44 in the Directive Principles of State Policy clearly reflects the intention of the framers of the Constitution to eventually bring about a legal framework that is

not fragmented by religion, region, or community. Article 44 states: *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*<sup>1260</sup>

Despite its constitutional mention, the implementation of the Uniform Civil Code (UCC) has remained elusive. Its supporters argue that it is vital for the promotion of national integration, gender justice, and equality before the law. On the other hand, critics view it as an imposition on religious freedom and minority rights.

The Indian legal system is unique in that it allows multiple personal laws to co-exist within a secular democratic framework. This coexistence, while respecting diversity, has also led to discrepancies and inequalities, particularly concerning women’s rights. For instance, Hindu women gained the right to inherit property and divorce much earlier due to codification, whereas Muslim women had to rely on traditional interpretations of Shariat or seek relief through the courts.

The Uniform Civil Code (UCC) seeks to harmonize these disparities by creating a singular civil law applicable to all citizens. The key objective is to establish legal uniformity in civil matters, thereby eliminating discrimination and promoting constitutional values like justice, equality, and human dignity.

Moreover, in a rapidly modernizing and globalizing society, where inter-religious marriages and social mobility are increasing, the need for a common civil law becomes more urgent. A unified legal code can simplify legal procedures, reduce ambiguities, and create a more inclusive social environment.

### Historical Background

The concept of a Uniform Civil Code (UCC) in India is rooted in the broader goals of legal unification, gender justice, and national integration. Historically, personal laws in India have been governed by religious doctrines that

vary significantly across communities. The Uniform Civil Code (UCC) proposes a unified set of secular civil laws applicable to all citizens, irrespective of their religion, to regulate personal matters like marriage, divorce, maintenance, succession, and adoption. However, the journey of this idea from colonial times to contemporary debates has been long, complex, and often contentious. Understanding the historical trajectory of personal laws in India is crucial for comprehending the political, social, and legal challenges that continue to surround the implementation of the Uniform Civil Code (UCC).

Before the advent of British rule, personal matters in Indian society were primarily regulated by customs, religious texts, and community norms. Hindu personal laws were based on Dharmaśāstra, particularly texts like Manusmriti, and various regional commentaries. Similarly, Muslim personal laws drew from Sharia, based on the Quran, Hadith, Ijma (consensus), and Qiyas (analogy).

With the establishment of British control over India, beginning in the 17th century through the East India Company, the British encountered a deeply pluralistic society with no uniform system of law. To avoid antagonizing religious communities and ensure smoother governance, the British adopted a policy of non-interference in personal laws.

The Regulating Act of 1773 and the establishment of the Supreme Court at Calcutta in 1774 led to the codification of laws that differentiated between matters of civil law and personal law. While criminal and commercial matters were gradually brought under a unified British legal framework, personal matters such as marriage, divorce, and inheritance were left to be governed by the religious laws of the respective communities. This policy was institutionalized through the Anglo-Hindu Law and Anglo-Mohammedan Law, interpreted and administered by British judges with the assistance of religious scholars and pundits.

<sup>1260</sup> The Constitution of India, art. 44

After independence, efforts were made to codify and modernize Hindu personal laws through the Hindu Code Bills passed in the 1950s, covering marriage, succession, adoption, and guardianship. However, similar codification was not undertaken for Muslim or Christian personal laws, thereby maintaining the legal pluralism inherited from colonial rule.

### Constitutional Provisions

The Indian Constitution, adopted in 1950, envisioned the creation of a unified and egalitarian society where all citizens would be treated equally irrespective of religion, caste, or gender. In pursuit of this goal, Article 44 of the Directive Principles of State Policy (DPSPs) enshrined the idea of a Uniform Civil Code (UCC). The Uniform Civil Code (UCC), in essence, aims to bring all personal laws, governing marriage, divorce, inheritance, succession, adoption, and guardianship under a single legal framework applicable to all citizens. Although non-enforceable by courts, Article 44 holds a significant place in the Constitution and serves as a guiding beacon for the State in matters of social reform and legal uniformity.

The inclusion of Article 44 was influenced by the colonial experience, where the British had codified separate personal laws for different religious communities. During the Constituent Assembly Debates, members such as Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, strongly advocated for a common civil code, arguing that such a code would promote national integration and gender justice.

However, due to strong opposition from certain religious and conservative members, Article 44 was included only as a Directive Principle, rather than a Fundamental Right. The compromise was seen as a recognition of the diverse religious traditions in India and a pragmatic approach in a newly independent nation.

One of the most significant constitutional debates concerning the Uniform Civil Code

(UCC) is its relationship with Fundamental Rights, particularly, Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination) and Article 25 (Freedom of Religion).

Proponents argue that the existence of different personal laws violates the right to equality by discriminating on the basis of religion and gender. For example, Muslim women under traditional Islamic law often face unequal treatment in matters of divorce and inheritance, while Hindu women historically had limited property rights.

The Supreme Court of India, in multiple judgments, has emphasized that personal laws must conform to the Constitution's guarantees of equality, dignity, and non-discrimination. In the landmark *Shayara Bano v. Union of India* (2017) case, which declared triple talaq unconstitutional, the Court underscored the primacy of Fundamental Rights over personal laws where they are inconsistent.

At the same time, Article 25(1) guarantees the freedom to practice and propagate religion. Critics of the Uniform Civil Code (UCC) argue that enforcing a common civil code could infringe upon this right by interfering with religious customs and practices. However, the Constitution also allows reasonable restrictions on religious freedom in the interest of public order, morality, and health under Article 25(2). This creates a nuanced balance between religious freedom and social reform.

### Role of Judiciary

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in shaping the discourse around the Uniform Civil Code (UCC) by interpreting constitutional provisions and balancing fundamental rights with directive principles. Article 44 of the Indian Constitution envisions a Uniform Civil Code (UCC) as part of the Directive Principles of State Policy, aiming to unify personal laws across religions in matters like marriage, divorce, inheritance, and adoption. However, due to the sensitive nature of personal laws rooted in religion and tradition,

the path toward a Uniform Civil Code (UCC) has been contested. In this context, judicial pronouncements have not only highlighted the relevance of Uniform Civil Code (UCC) but also acted as catalysts for debate, reform, and policy reconsideration. This section critically examines key judicial decisions, their implications, and the broader constitutional dialogue on the Uniform Civil Code (UCC).

#### Sarla Mudgal v. Union of India (1995)<sup>1261</sup>

One of the landmark judgments where the Supreme Court explicitly advocated for the implementation of a Uniform Civil Code (UCC) was in the case of *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531. The case involved Hindu men who converted to Islam to contract a second marriage without legally dissolving their first marriage, raising questions about misuse of personal laws.

The Court, through Justice Kuldip Singh, held that permitting such conversions to circumvent Hindu personal laws amounted to a fraud on law. He emphasized that a common civil code would help prevent such legal anomalies and uphold the secular character of the Constitution.

#### Mohd. Ahmed Khan v. Shah Bano Begum, (1985)<sup>1262</sup>

In *Shah Bano Begum v. Mohd. Ahmed Khan*, AIR 1985 SC 945, the Court dealt with the issue of maintenance for a divorced Muslim woman under Section 125 of the Code of Criminal Procedure (CrPC). The husband contended that under Muslim personal law, he was obliged to pay maintenance only during the iddat period. The Court, however, ruled in favor of Shah Bano, upholding her right to maintenance under Section 125 of Code of Criminal Procedure (CrPC), which applies to all citizens irrespective of religion.

The judgment sparked a nationwide debate, eventually leading to the passage of the Muslim Women (Protection of Rights on Divorce) Act,

1986, which diluted the effect of the decision. Nonetheless, this case placed the Uniform Civil Code (UCC) firmly in public and legal discourse.

#### Shayara Bano v. Union of India (2017)<sup>1263</sup>

The most recent and significant judicial development came in *Shayara Bano v. Union of India*, (2017), where the practice of *talaq-e-biddat* or instant triple talaq was challenged. The Supreme Court held this practice unconstitutional, asserting that it violated the fundamental rights of Muslim women.

Though the verdict did not directly rule on the Uniform Civil Code (UCC), it reaffirmed the judiciary's role in reforming personal laws that are inconsistent with constitutional principles of equality and gender justice. Justice Nariman, in his concurring opinion, emphasized that religion cannot be an excuse to perpetuate discrimination.

The verdict prompted the legislature to enact the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing instant triple talaq and signifying the judiciary's indirect role in ushering in reform in personal law practices.

Over the decades, the judiciary has constructed a vision of the Uniform Civil Code (UCC) that is inclusive, non-coercive, and centered around constitutional values. Rather than enforcing a rigid uniformity, the courts have promoted an idea of common civil law grounded in justice, equality, and human dignity.

This vision does not necessarily mean erasing all religious practices but ensuring that these do not violate the rights of individuals, especially women and marginalized groups. The role of judiciary has thus been twofold, as a guardian of constitutional morality and as a forum for redress against discriminatory practices within personal laws.

#### **Arguments in favour and against Uniform Civil Code (UCC)**

The concept of a Uniform Civil Code (UCC) in India has sparked decades of debate, residing

<sup>1261</sup> AIR 1995 SC 1531

<sup>1262</sup> AIR 1985 SC 945

<sup>1263</sup> AIR 2017 SC 4609

at the confluence of legal uniformity, secularism, gender justice, and the cultural pluralism embedded in Indian society. Envisioned under Article 44 of the Constitution of India, the Uniform Civil Code (UCC) aims to replace diverse personal laws based on religion and community customs with a common set of secular civil laws that govern matters such as marriage, divorce, inheritance, and adoption. The discussion surrounding the Uniform Civil Code (UCC) continues to generate divergent opinions, particularly on its implications for fundamental rights, religious freedom, social cohesion, and gender equality.

### Arguments in Favour

#### 1. Promotion of Gender Justice

One of the strongest arguments in favour of the Uniform Civil Code (UCC) is its potential to ensure gender justice. Many religious personal laws, particularly those governing marriage, divorce, and inheritance, contain discriminatory provisions that place women at a disadvantage.

For instance, under traditional Muslim law, unilateral triple talaq (before it was struck down in *Shayara Bano v. Union of India*, 2017) allowed a man to divorce his wife without due process, whereas a woman had limited grounds for seeking divorce. Similarly, inheritance laws under Mitakshara Hindu law traditionally restricted daughters' rights to ancestral property. A Uniform Civil Code (UCC) could establish equal rights for women across all communities.

#### 2. Ensuring Equality Before Law

Article 14<sup>1264</sup> of the Indian Constitution guarantees equality before the law and equal protection of laws. Yet, the coexistence of multiple personal laws results in differential treatment of individuals based on religion. A Uniform Civil Code (UCC) would create a single, common framework that treats all citizens

equally, ensuring that legal outcomes are not determined by one's religious affiliation.

#### 3. Fostering National Integration

India is a diverse country with various religions, languages, and customs. The implementation of a Uniform Civil Code (UCC) is viewed by many as a tool to promote national integration by fostering a sense of unity and common identity among citizens. It can eliminate legal fragmentation and foster cohesion by embedding the idea that all Indians are governed by the same laws irrespective of religious background.

#### 4. Simplification of the Legal System

A uniform code could significantly simplify the legal system by reducing the complexity of dealing with multiple personal laws. Lawyers, judges, and citizens would benefit from a streamlined set of civil laws, reducing confusion, litigation time, and interpretative inconsistencies.

#### 5. Constitutional Vision and Directive Principles

The inclusion of Article 44 in the Directive Principles of State Policy reflects the framers' long-term vision of a secular and egalitarian legal system. Although not justiciable, Article 44 serves as a guiding principle, suggesting that the state shall endeavour to secure a uniform civil code for all citizens. The Uniform Civil Code (UCC), therefore, is seen as a step towards realizing the constitutional mandate of social reform.

#### 6. Judicial Endorsement and Progressive Jurisprudence

The judiciary has often endorsed the need for a Uniform Civil Code (UCC). The Supreme Court stressed the necessity of a common civil code to protect the sanctity of marriage and prevent misuse of religious conversions. Similarly, the apex court has consistently advocated for reforms in personal laws to ensure constitutional morality.

<sup>1264</sup> The Constitution of India, art. 14

## Arguments Against

### 1. Infringement on Religious Freedom

One of the primary concerns raised by critics is that the Uniform Civil Code (UCC) might infringe upon the religious freedom guaranteed under Article 25 of the Constitution. Personal laws are deeply rooted in religious practices and cultural traditions. Imposing a common code is perceived by some communities as an attempt to dilute their religious identity and autonomy.

### 2. Threat to India's Pluralism and Diversity

India's strength lies in its cultural and religious diversity. Critics argue that a single set of laws may not adequately reflect or accommodate the diversity of customs, traditions, and values followed by different communities. They contend that the Uniform Civil Code (UCC) could lead to homogenization and the erosion of India's pluralistic ethos.

### 3. Political Misuse and Majoritarianism

Some opponents view the push for Uniform Civil Code (UCC) as politically motivated, often aligned with majoritarian sentiments. They fear that a uniform code could end up reflecting the customs and traditions of the majority community, thereby marginalizing minority voices. This perception has made the issue politically sensitive and divisive.

### 4. Lack of Consensus Among Communities

The Uniform Civil Code (UCC) has faced resistance from various religious communities, including Muslims, Christians, and Parsis, who fear the loss of their distinct personal laws. Any attempt to legislate a Uniform Civil Code (UCC) without achieving adequate social consensus might lead to unrest and backlash. Critics emphasize that social reform must come from within communities and not through state imposition.

### 5. Risk of Legal Uncertainty and Resistance

The implementation of a Uniform Civil Code (UCC) would require overhauling existing personal laws, which could result in legal

uncertainty during the transition period. Resistance from various communities may further complicate implementation and enforcement, leading to litigation and conflict.

### 6. Need for Gradual and Inclusive Reform

Many opponents of the Uniform Civil Code (UCC) argue not against the idea per se but against the manner of its implementation. They advocate for a gradual, consultative, and inclusive approach that respects religious sentiments and builds consensus. Reform should be undertaken step-by-step, beginning with gender just amendments within personal laws.

## **Conclusion**

The debate around the Uniform Civil Code (UCC) continues to occupy a pivotal place in India's constitutional discourse, reflecting a larger tension between tradition and modernity, individual rights and collective identities, and the ideals of equality and religious freedom. Article 44 of the Indian Constitution, placed within the Directive Principles of State Policy, envisions a common set of civil laws applicable to all citizens, regardless of religion. However, more than seventy years after the adoption of the Constitution, this vision remains unrealized, primarily due to the socio-religious sensitivities surrounding personal laws.

The applicability of the Uniform Civil Code (UCC) in the Indian context is multifaceted. On one hand, it is seen as a necessary instrument for promoting gender justice, legal uniformity, and national integration. Personal laws, particularly in matters of marriage, divorce, inheritance, and adoption, often reflect patriarchal norms and unequal treatment, especially toward women. A uniform code promises to eliminate these disparities and ensure that all citizens enjoy equal rights under the law, irrespective of their faith.

On the other hand, critics of the Uniform Civil Code (UCC) argue that enforcing a single code across diverse religious communities risks infringing upon their cultural and religious

autonomy. India's strength lies in its pluralism, and any move toward uniformity must be carefully balanced with respect for religious freedom, as guaranteed under Article 25 of the Constitution. There is a genuine concern that a uniform code, if implemented insensitively or with political motives, could alienate minority groups and deepen social divisions.

The implementation of the Uniform Civil Code (UCC), therefore, cannot be abrupt or unilateral. It must be undertaken through a gradual, consultative, and inclusive process that brings together voices from all sections of society, legal experts, religious leaders, social reformers, and civil society. A model or optional code, initially applied on a voluntary basis, may be a pragmatic step toward achieving broader acceptance and minimizing resistance.

Ultimately, the Uniform Civil Code is not merely a legal reform, it is a test of India's commitment to constitutional ideals. Its successful implementation depends on whether it can uphold the values of equality, justice, and secularism while respecting the cultural diversity of the nation. With careful deliberation, transparent dialogue, and sensitivity to the pluralistic ethos of India, the Uniform Civil Code (UCC) can become a meaningful step toward a more just and unified society.

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