



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 7 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 7 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-7-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

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Maudhanda Kurichi, Srirangam,

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THE STATUS OF PERSONAL LAWS IN INDIA AND THE NEED FOR UNIFORM CIVIL CODE

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BEST CITATION – HASHMI IFFAT RIYAZ & MS. HONEY THAKKAR, THE STATUS OF PERSONAL LAWS IN INDIA AND THE NEED FOR UNIFORM CIVIL CODE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (7) OF 2025, PG. 424-431, APIS – 3920 – 0001 & ISSN – 2583-2344

Abstract:

The present research paper analyses the status of the personal laws in India and the need for Uniform civil code. One of the primary concerns is how to balance the need for a uniform legal framework with constitutional guarantee of the religious freedom. The paper focuses on the historical background with regard to personal laws their influence on the cultural diversity of India and constitutional relevance of freedom of religion and provision of uniform civil code. Furthermore, the paper puts an insight on the suggestion of 21st law commission report. With a considerable sense, the researcher draws conclusion by putting certain suggestion and recommendation at the end. It is not unfair to be said that without extending equal justice to all, a legal system cannot work appropriately.

Keywords: Uniform civil code, Portuguese civil code, personal laws, secularism, Uttarakhand, Gujarat, Assam.

Acknowledgment

Firstly, I humbly offer my heartiest praise to Almighty, for his blessing and mercies towards us. It is my privilege to present this research work under the guidance of Ms. Honey Thakkar, professor at department of law at Gokul law college, Gokul global university. Her masterly guidance and lucid literacy style and affectionate cooperation made me competent to bring the work in present form.

It is a pious obligation upon me to express my sincere and honest gratitude towards my siblings to encourage me throughout this research work and to help me find solution to every problem.

Scope of the research

To recognize the issues and conflicts of applicability of personal laws in India due to not having a common civil Code and to make

suggestions for preparing an appropriate and inclusive draft of Uniform Civil Code for India.

Literature survey

In the present research paper, primary as well as secondary sources are used for the purpose of getting deeper and clear knowledge. Articles of constitution are interpreted as well as the history of the personal laws and their evolution in India and the report of the 21st law commission are discussed in the present paper.

Hypothesis of the research

The present scenario of balancing the need for a uniform legal framework with constitutional guarantee of the religious freedom.

Introduction

The word uniform has derived from a Latin term “uniformis” which means of one form whereas the word civil has derived from “civis” which means citizen, therefore uniform civil code is

'one form of law for all citizens'. Civil code is prevalent in India through various codes like Indian penal code i.e. Bhartiya Nyay Sanhita, Criminal Procedure Code i.e. Bhartiya Nagarik Suraksha Sanhita and Civil Procedure Code. As India is a secular country which provides the freedom of religion to its citizen, where personal law overlaps the laws of the country.

The prevalence of this tradition of religious tolerance has been continued despite of some deviations on occasions. The same age-old tradition was incorporated in the constitution of India after the independence and the multitude of religions was made a feature of Indian polity. Following India's independence, Hindu code bills were introduced which largely codified and reformed personal laws in various sects among Indian religions like Buddhists, Hindus, Jains and Sikhs but there was no codified law of Christians, Jews, Muslims and Parsis. The Uniform Civil Code is a proposal in India to formulate and implement personal laws of citizens which apply on all citizens equally regardless of their religion. Currently, personal laws of various communities are governed by their religious scriptures.

In ancient India, religion and law were intertwined with the wisdom imparted by 'Shruti' and 'Smriti' serving as the primary sources codifying the ways of life. The 'Shruti' contained all four Vedas, namely Rig Veda, Sama Veda, Yajur Veda, and Atharva Veda. The Smritis' were teachings and commentaries handed down by sages of the Hindu religion. The other two

'smritis' were Yajnavalkya, and Narada. The history of medieval India was predominantly dictated by Islamic laws as most of the rulers were Muslims. The primary source of the Muslim personal law was Quran. This was supplemented by the teachings of Prophet Mohammed, Ijma (consensus) – the agreement of Muslim scholars on points of Islamic Law, Qiyas – an analysis made using the available sources when the existing laws are not applicable to a particular case and

commentaries of Muslim law by ancient Muslim scholars. In most parts, Islamic public law was applied to all subjects irrespective of their religion. Initially through the Charter of 1753, The British gave both Hindus and Muslims freedom to practice their personal laws. It was clearly established that there will be no interference from the British unless the two parties in a dispute willingly submitted to the jurisdiction of the court. In 1772, the Governor General of India, Warren Hastings had laid down that laws of Quran will be applied to Muslims and those of the Shastras to the Hindus.

Fundamentally the present scenario of Uniform Civil Code is a single law applicable to all the citizens of the country notwithstanding any personal law provisions. The present debate of UCC is to apply a single code even in matters of

- a. Marriage
- b. Divorce
- c. Maintenance
- d. Adoption
- e. Succession
- f. Guardianship
- g. Custody of child, legitimacy of child and other matrimonial aspect
- h. Gifts and wills;

Nullifying the personal laws in the country. It sparks the debate within the country as India is deep-rooted with its religio-cultural tradition and diversity. Existence of varieties of culture, traditions, ethics, languages and religion are the basic characteristics of India as a nation. The prevalence of the personal laws in India is since the British empire. They framed various laws for Hindus and Muslims citizens of the country in particular, later British feared the opposition from community leaders and refrained from further interfering within this domestic sphere.

The state of Goa was separate from the British empire and was under the rule of Portuguese, thereupon The Portuguese civil code 1867 is governed in Goa till today. It became the first state of India to introduce uniform civil code in its state before independence. Recently Uttarakhand has become the first state to introduce Uniform Civil Code after Independence. In the newest Gujarat and Assam has formed a panel to see the need and implementation of uniform civil code in the state.

Nationwide implementation of a Uniform Civil Code remains an elusive goal. As of now, most of the aspects related to marriage and divorces of persons belonging to different religions continue to be governed by their respective personal laws such as:

- a. Hindu Marriage Act (1955)
- b. Muslim Personal Law (Shariat) Application Act (1937)
- c. Christian Marriage Act (1872)
- d. Parsee Marriage and Divorce Act (1937)
etc

Later on, by witnessing the spark in the matter of cases of personal laws again the concern arose for the need or uniform civil code. Sarla mudgal vs. Union of India (1995) in which the Supreme Court dealt with the issue of bigamy and conversion for the purpose of second marriage. While in the case of Shah bano case (1985) the issue was of maintenance after divorce. There remains a lengthy list of cases dealing with the issue of Personal laws and poking the need of Uniform Civil Code.

India has a unique blend of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family-related law in a single statute book for all Indians which is acceptable to all religious communities who co-exist in India. However, a majority of them believe that UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood. The differences of opinion

are on its timing and the manner in which it should be realized.

Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve a consensus. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with dignity, something which personal laws have so far failed to do.

Uniform Civil Code

At the drafting of the constitution a severe debate took place for the application of UCC, it was originally encapsulated in article 35 of the Draft Constitution. There was a demand to add a proviso in article 35 which would make the UCC, whenever it would have been enacted, not obligatory in nature and personal laws be kept out of its purview. The proviso read as,

“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”. B. R. Ambedkar who is known as father of constitution was also a staunch supporter of the UCC. He denied the claims that a common civil code in a vast country, like India, would be impossible. He stated that the only sphere which did not have a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, easement act, sale of goods etc. were uniform in nature.

After a long critical discussion in the constituent assembly, the provision of Uniform Civil Code was encapsulate in Part IV Art. 44 of the constitution of India. Part IV states some directions for the state. The directions and guidelines mentioned in this part are not obligatory. These are mere guideline which a state may follow. These directions help the state in the governance and in the administration also. Art. 44 mandates that “the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. This Article of the Constitution directs the State of India to frame and implement a

common civil code for the entire country and no other provision of the Constitution speaks anything about the Uniform Civil Code. A Uniform Civil Code advocates for a system of law as per which all the sections of society without any discrimination on the basis of religion shall be treated with equality according to a national civil code, which shall be applicable to all in a uniform manner. The uniformity brought by the norms and rules of the social conduct works as an instrument for checking the chaos and disorder in society. Indian society has demonstrated both the dimensions of governance i.e. uniform rules of social relationship and the norms which were affected by the discrimination and prejudices. The Uniform Civil Code is an imperative in the Constitution of India, which has raised a long-lasting debate questioning various other principles like secularism, fundamental rights and fundamental duties.

The term secularism was added in the preamble by the 42th amendment of the Constitution. This term means a lot to the people. By this term the personal rights of people are protected by the authorities and people are able to maintain their faith and belief. The legislature owns its power to govern the personal matters of the citizens by the Uniform Civil Code from the Constitution of India. When the Hindu law was enacted and some practices were abolished which were based on custom from that time there is a great demand of the uniform civil code in the country. And not only Hindu Laws Muslim Personal Laws were also moderated and that also gave rise to the demand of uniform civil code. In India both the opposition and favour of the common code exists. Some scholars are against the uniform civil code and some scholars support this idea. While drafting the provision of the uniform civil code we have seen that a great debate took place in the assembly and many points were put forward. And the provision for uniform code was drafted in Article 35 of the Constitution after a long debate. Dr. B.R. Ambedkar ensured that this

code will not applicable to anyone forcefully. It will be applicable to those only who will give the consent to be governed by it. So, the application of this provision was not made compulsory.

Religion is not defined in the Constitution of India. However, it does not close its eyes on the reality of religions. There are a number of provisions in the Constitution which either uphold the human right to freedom of conscience and to free profession, practice and propagation of religion or attempt to restrict the affairs of religion or protect the people from imposition of religious instruction or practices against their will or introduce social reform against undesirable religious practices. Thus, the Constitution takes note of and accepts the facts of religion as well as irreligion. The objective of Article 44 is to promote social harmony and national integration by fostering a common civil code that applies to all citizens regardless of their religion, caste, or community. It envisions a unified legal framework governing personal matters such as marriage, divorce, inheritance, and adoption. The principle of equality is central to Article 44. It seeks to eliminate discrimination and promote gender equality by ensuring that all citizens, regardless of their religious or cultural background, are subject to the same laws governing personal matters. This is particularly relevant in addressing gender inequalities perpetuated by existing personal laws. The principle of equality is central to Article 44. It seeks to eliminate discrimination and promote gender equality by ensuring that all citizens, regardless of their religious or cultural background, are subject to the same laws governing personal matters. This is particularly relevant in addressing gender inequalities perpetuated by existing personal laws.

Part III of the constitution talks about the fundamental right of the citizens, where Art. 25-28 enshrines the provision of freedom of religion. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and

practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution, the most important being the Kesavananda Bharati case.

Article 25: Grants every individual the freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. This encompasses both the internal belief and external expressions through rituals and dissemination of religious tenets.

Article 26: Affords religious denominations the autonomy to manage their own affairs in matters of religion, establish and maintain institutions, and administer property, again subject to public order, morality, and health.

Article 27: Prohibits the imposition of taxes whose proceeds are specifically appropriated for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Restricts religious instruction in educational institutions wholly funded by the State, ensuring that attendance at religious worship or instruction is voluntary in State-recognized or State-aided institutions.

Proponents of a uniform civil code (UCC) argue that it will promote equality and justice, while its opponents fear that it may lead to the erosion of minority rights and cultural diversity. Striking an equilibrium between Articles 25–28 and Article 44 of the constitution while implementing the UCC is of utmost importance to ensure that this process is not just a political ploy, but the intellectually deliberated pursuit of harmonious governance. The need for a UCC must not be driven by emotional arguments of either the majority or minority communities, nor should it be a political charade. Instead, it must be approached with intellectual labour and rigorous deliberations, considering its implications on the diverse fabric of the nation.

Report of 21st Law Commission on UCC

I. In 2018, the Law Commission issued a consultation paper instead of a final report on the UCC.

II. The paper titled Reforms of Family Law argued for reforming family laws across religions through amendments and codifying personal laws to limit “ambiguity in interpretation” and application.

Following are some of the suggestions:

I. UCC is neither necessary nor desirable at this stage.

II. A unified nation did not necessarily need “uniformity”. Difference did not always imply discrimination in a robust democracy.

III. Secularism could not contradict the plurality prevalent in the country. “Secularism” had meaning only if it assured the expression of any form of difference.

IV. Discriminatory practices within a religion should not hide behind the cloak of that faith to gain legitimacy. The discriminatory practices, prejudices and stereotypes within a particular religion and its personal laws should be studied and amended.

V. Certain measures in marriage and divorce should be uniformly accepted in the personal laws of all religions. Some of these amendments include fixing the marriageable age for boys and girls at 18, making adultery a ground for divorce for both men and women, etc.

Comparison Between Personal Laws

India's personal laws regarding different matters are governed by their laws, primarily governed by Hindu, Muslim, Christian, and Parsi laws. Here's a comparative overview:

Inheritance and Succession:

Hindu Law: Governed by the Hindu Succession Act, 1956. Applies to Hindus, Buddhists, Jains, and Sikhs. Allows inheritance through both male and female lines. Sons have a birthright to ancestral property, while daughters were initially limited but gained equal rights post amendments.

Muslim Law: Governed by personal laws and the Muslim Personal Law (Shariat) Application Act, 1937. Inheritance is based on the Quran and Hadith. Division typically favors male heirs, with women receiving half the share of their male counterparts. No concept of ancestral property; all property is treated as individual.

Christian Law: Governed by the Indian Succession Act, 1925. Inheritance follows a testamentary system; individuals can bequeath property through a will. Under intestate succession, the distribution varies based on the deceased's marital status and number of children.

Parsi Law: Also governed by the Indian Succession Act. Similar to Christian law regarding testamentary succession. Inheritance rules promote equal rights among male and female children.

ADOPTION:

Hindu Law: Governed by the Hindu Adoption and Maintenance Act, 1956. Only Hindus can adopt, and both males and females can be adopted. Adoption must follow specific procedures, including consent from the adoptive father/mother.

Muslim Law: No formal adoption under Islamic law; instead, "Kafala" (guardianship) is practiced. The adopted child does not acquire inheritance rights from the adoptive parents.

Christian Law: Adoption is governed by the Juvenile Justice Act and the Adoption Regulation, 2017. Christians can adopt under the same procedures as others, following secular laws.

Parsi Law: Governed by the Guardians and Wards Act, 1890. No formal adoption process; focuses on guardianship similar to Muslim law.

Matrimonial Matters:

Hindu Laws: The Hindu Marriage Act is a law in India that governs marriages among Hindus,

Buddhists, Jains, and Sikhs. It provides rules and regulations for solemnizing and registering marriages. The act specifies conditions for a valid marriage, rights, and obligations of spouses, and grounds for divorce and maintenance.

Muslim Laws: Marriage in Muslim take place as per shariah law. It is a civil contract between the parties to fulfil duties and obligation in the marriage. Matters like divorce and maintenance are also governed by shariah laws and the fiqh.

Parsi laws: Parsis are governed in the matters of marriage and divorce by the Parsi Marriage and Divorce Act, 1936. The Act is divided into six chapters and deals with marriage between Parsis, matrimonial courts, matrimonial suits, children of the parties and miscellaneous provisions.

Christian laws: Christian marriage act, 1872 is prevalent for the matters of marriage whereas matter of divorce is governed by Indian Divorce Act of 1869.

CONCLUSIONS

From the above research on personal laws and need of uniform civil code in India, the researcher can draw the inference that the rising cases against the provision of personal laws thrust the need to implement uniform civil code in India, but on the other hand the supplemental half of the population is sceptical on the issue of UCC. Through the analysis the researcher put forward certain recommendation that can be taken into consideration while conveying the issue of UCC:

1. Presently, agreeing with the 21st law commission UCC should not be made a sin qua non. The constitution makers

must have thought about something by not making it as a mandatory clause, as India is a secular country and it is difficult for the law makers to blend the religious laws and make a single law with doesn't hurt the feeling of any sect of the country as article 25, 26 guarantees every citizen their right to propagate any religious affairs fully.

- II. Religious laws were made by the ancestors with due diligence and with long experiences while blending it with holy texts, though with the passing of time things get innovate and so should be the laws to coordinate with changing environment.
- III. Indian society has always remained as a male dominative society, therefore even in personal laws they always preferred and had kept their focus on male's rights rather than balancing it. No religion is biased on basis of gender it is the people to make it flexible on their favorable side.
- IV. One of the major concerns remains the polygamy and triple talaq in Muslim law as it takes away certain right of women, the solution to this can be that at the time to Nikah (marriage) the woman should state all the condition in her Nikahnama on with both spouse sign, if any terms get violated in future, then the husband should bear the consequences predetermined in the nikahnama. By this, there will remain clarity and confidentiality between the spouse.
- V. The other major concerns remain of inheritance and succession, then certain changes can be made in personal laws by referring the matters with the scholars of that particular religion as every religion provides flexibility to certain extent with the changing environment.

- VI. By approaching the other side of the coin, UCC can also be implemented by keeping such provisions which should not hurt any religious sentiments, and by not making it mandatory but a voluntarily acceptable clause. The person can himself/herself choose that by which they want to be governed. Certain steps for this have also be taken in past as enactment of special marriage Act, 1954, Indian Succession Act, 1925 etc.
- VII. Recognition of UCC is visualized as such infringing the rights of people to enjoy their religion. It is due to lack of awareness among people, political propaganda and more on. Therefore, people should be made aware that UCC is not evil but a solution to the problem if implied in a Bonafide manner.
- VIII. Poll should be conducted with particular provision which seems to be controversial, within the people of that religion to know their opinion towards that matter, this will create a sense of genuineness among the people and they will find it confidential to implement it.
- IX. India is a country where people follow their religion wholeheartedly and has a status of secular country. Any interference or change to their laws without their inference can upset them and it can also turn into a chaos in the country. Therefore, it is recommended that the delicate part of the personal laws should be remained untouched, additionally an alternative option can be made available so that no one should feel that their rights got infringed.
- X. UCC can be implemented but with a flexibility by keeping the rule of law as supreme. Certain areas of conflict should remain as it is, so that no one should feel that their fundamental rights are infringed. It should be implemented

that the essence of secularism of the country remains intact.

- XI. The difference between religions is basically very little when we look to their deeper philosophical terrains, which emphasizes on moral perfection either in individual or social behavior. The objective of Uniform Civil Code in India has been to achieve national integrity through communal harmony. Every Citizen of India must have a duty to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and sectional diversities.

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