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## THE UNIFORM CIVIL CODE AS A DRIVER OF GENDER JUSTICE: A CRITICAL ANALYSIS OF PERSONAL LAWS IN INDIA

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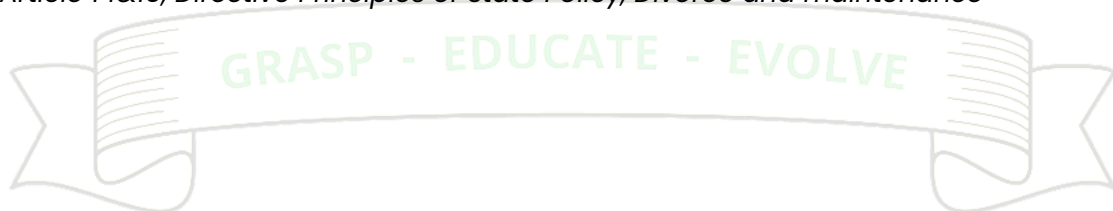
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### ABSTRACT

The debate over the Uniform Civil Code (UCC) in India is often depicted as a struggle between secularism and religious freedom, and this has the effect of making its main potential as a transformative tool for gender justice rather less visible. This study takes a great leap forward from the political and religious slogans to perform an academic evaluation of the UCC's possible enforcement role as a genuine equality creator within the family unit. In the meantime, the legal system in India is very much diverse and fragmented due to the presence of different personal laws that are based on religion and govern the important aspects of family life like marriage, divorce, maintenance, guardianship, and inheritance. A close examination indicates that a good number of these laws, supported by the ancient patriarchal views and customs, continue the oppression of women, irrespective of their religion.

According to this research, a deliberately implemented UCC, instead of serving as a means of cultural uniformity, is a requirement of the constitution (Article 44)<sup>1482</sup> and a right thing to do for the protection of women's rights (Articles 14 and 15)<sup>1483</sup>. The study will focus on the analysis of the gender bias that is embedded in the uncodified and semi-codified personal laws of the largest communities and will further assess, with a critical eye, the historical attempts at reform, e.g., the Hindu Code Bills, to learn from them for the UCC. The paper eventually asserts that when a progressive, reformative UCC that emphasizes the best practices from all personal laws is put in place, it will be the most effective and sustainable approach.

**KEY WORDS:** Uniform civil code, Gender justice, Personal Laws, Constitutional Morality, Right To Equality, Article 14&15, Directive Principles of State Policy, Divorce and maintenance



<sup>1482</sup> See The Constitution of India, 1950, Article 44 (Directive Principles of State Policy).

<sup>1483</sup> See The Constitution of India, 1950, Articles 14 and 15 (Right to Equality and Prohibition of Discrimination).

## INTRODUCTION

The promise of equality is written in the Preamble of the Indian Constitution, securing to all citizens “Justice, Social, Economic and Political” and “Equality of status and of opportunity.”<sup>1484</sup> Nevertheless, seven decades post-independence, the fact of life for almost half of India’s population, i.e. women, is that they are still unequal in the most private area of human existence, the family, to a great extent. The main cause of this disparity is a complex and intertwined set of Personal Laws, which control major civil matters like marriage, divorce, maintenance, adoption, and property inheritance according to the individual’s religion. Although the penal and commercial laws of the country are the same for everyone, the area of family law is still a separate and diverse legal one, frequently operating under outdated codes that reflect a male-dominated past.

The concept of the Uniform Civil Code (UCC), which is enshrined in Article 44 of the Directive Principles of State Policy, places an obligation on the State to strive for the introduction of a Uniform Civil Code over the whole of India. This constitutional issue has been intra and inter-state conflicts for over decades. The debate is usually polarized: one side needs it for national unity and secularism, while the other side views it as the source of religious and cultural identity especially for minorities that cannot be allowed to be violated. The paper, however, argues that to dismiss the UCC discussion as a political weapon would be to ignore its most potent and urgent reason: gender justice.

The prevailing legal framework of personal laws shows intent to appreciate cultural pluralism; however, it still ends up doing so inadvertently by allowing and establishing discrimination against women in the name of religion. The various forms of this discrimination can be seen in practices within different religious denominations such as Islamic law permitting instant divorce and polygamy, historical

disfavor of Hindu women in property rights until the last of the amendments, restricted divorce and custody rights for Christian and Parsi women, etc. The common element in all these cases is the systemic oppression of women. Personal laws frequently sided with patriarchy over women’s rights based on constitutional equality.

Rather than questioning if the UCC is needed, the inquiry should be directed toward the method of its formulation so that it is really seen as a change to everyone’s good. An effective UCC must be a forward-looking combination of the fairest principles existing in all laws, not simply an imposition of one group’s laws on the other. It should offer a baseline of rights—the minimum standard of gender respect—that is universally applicable. With this in mind, the paper intends to redirect the discussion from a superficial ‘us versus them’ political standoff to a rigorous academic scrutiny of legal reform, constitutional outlook, and the human requirement of justice. The next parts will carefully delve into the gender biases in the current personal laws and will present a humane, scholarly case for a UCC that puts the dignity and basic rights of every Indian woman above the strictures of religious customs and outdated tradition. The principal aspect of this study lies in proving that women’s rights cannot be dependent upon their religion.

## THE ANATOMY OF PATRIARCHY: INEQUITIES WITHIN EXISTING PERSONAL LAWS

The most important reason for promoting UCC based on gender justice is the deep and critical assessment of the personal laws of India’s different religions that shows the systemic inequities that are still there. Even though the constitution guarantees equality for all (Articles 14 and 15), the family law often works with an exemption clause that allows religious tradition to overshadow individual rights.

The most pronounced area of the disparity is divorce and marital rights. Uncodified Muslim personal law gave the husband the right to divorce his wife by mere pronouncement of the

<sup>1484</sup> The Constitution of India, 1950, Preamble.

word 'talaq' three times, a practice which was declared unconstitutional and struck down by the Supreme Court in 2017.<sup>1485</sup> But still men have other ways of getting rid of their wives without going to the court which makes the power difference really big. Another point where Muslim men are in a better position than Hindu men is the practice of polygamy that Muslim men can still engage in whereas the Hindu Marriage Act, 1955 prohibits monogamy for Hindu men.<sup>1486</sup> This situation puts Muslim women at risk of marital hardships and the legal status of women is not the same in the country. The Hindu Code Bills abolished or reformed a number of practices, but even under the codified Hindu law, women had to face the challenge of getting property as an heir and were not entitled to the related fragmentation of rights until the historic change made in the Hindu Succession Act, 1956 in 2005<sup>1487</sup>. The problem is further compounded by the fact that even in some tribal and regional communities where customary laws are still in place, property ownership and control are frequently regarded as being solely in the hands of male family members.

Another important area is guardianship and maintenance. While the law often considers the father as the natural guardian and hence is the main authority over the minor children, the mother's legal rights are greatly reduced by this. The whole issue of maintenance laws has been a hot topic, especially for divorced Muslim women, with the well-known Shah Bano Begum case (1985) at the forefront. The parliament's overturning of the Supreme Court's ruling in that case not only pointed out but also confirmed the religious and political concerns that have been put over a basic right to survival for poor women. The UCC intends to do away with this discrimination by introducing a single secular and gender-neutral law for custody,

guardianship, and maintenance that will not allow the legal rights or economic survival of a woman to be decided by her ex-husband's religion or a community's interpretation of sacred texts.

If one views these discriminatory practices solely as stemming from 'religious custom', then one is overlooking the human cost. The current situation where the laws are not unified causes women's autonomy and dignity to be bound by chains which are not visible. If the UCC is well-made, it will in a way secularize the personal realm drawing family laws from the religious sphere and placing them under constitutional rights. This should not be considered as an assimilation but rather as a very fundamental baseline for human dignity to be established, which means that no tradition, no matter how old, can deny the equality of a woman citizen. Thus, the UCC is not merely a legal proposal, it is a necessary and immediate response to the gender subordination that has been documented, legalized and continued across India's diverse legal landscape.

#### **LEARNING FROM REFORM: THE HINDU CODE BILLS AND THE PATH TO A PROGRESSIVE UCC**

The Uniform Civil Code's introduction is commonly viewed as a big legal step forward, which may cause more trouble in the area of arts and culture in India that is already very delicate. However, if one observes legal history of India, especially the enactment of the Hindu Code Bills in the mid-1950s closely, one can spot a phenomenon where superior, gender-oriented reform has triumphed over strong conservative opposition. The process of modernizing and codifying Hindu personal law thereby has provided a roadmap that not only warned but also equipped one with a successful strategy for the progressive UCC implementation.

The Hindu Code Bills that consisted of the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act were the greatest breakthrough at that time. They

<sup>1485</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1 (The Triple Talaq judgment).

<sup>1486</sup> The Hindu Marriage Act, 1955, (Introduced monogamy and grounds for divorce).

<sup>1487</sup> The Hindu Succession Act, 1956, as amended by the Amendment Act, 2005 (Granting daughters co-parcenary rights).

ushered in changes that were very radical and deeply impacted the family structure. Among the changes made were the adoption of monogamy, the right of women to divorce, and equal sharing of property and inheritance with men. Despite the prevailing severe political and social disturbances, these reforms were successfully carried out. The conservative section of society along with some parts of Parliament argued that the reforms were tantamount to state interference, wiping out of ancient Hindu custom (Dharma), and unwarranted intrusion into the religious domain. However, the political will and constitutional vision of leaders like Dr. B. R. Ambedkar won and a powerful lesson was established: progressive social reform, however controversial, is the essence of constitutional democracy.

The UCC debate's main conclusion is that uniformity should give way to reform as the main priority. Whether the UCC will be a success or not will not be judged by the majority community's laws being imposed on the minorities but on the gender-equitable clauses that could be derived from all personal laws, including the Goa Civil Code<sup>1488</sup> the Special Marriage Act<sup>1489</sup> and the best practices from various tribal and customary legal systems—to create a truly modern secular code. A good example of this would be the Goan system of communion of assets in marriage which gives both spouses equal rights to the assets acquired during marriage and could be a very progressive aspect to consider in the UCC. The UCC should also take into account the latest judicial decisions like the Supreme Court's ruling regarding the right to maintenance and the equal standing of parents in custody matters.

On the other hand, the Hindu Code Bills along with their amendments still give a warning signal. The 2005 amendment does not guarantee that property rights are completely equal so the law remains an unfinished project, and the implementation of the guardianship

laws varies with the father's being the favored one. This draws attention to an important point: the law is not enough by itself; it needs people's awareness, judges' interpretation, and social acceptance for its success. The UCC must not only be a facilitator of gender justice but also be a law that is very clear, very simple, and very firm in its commitment to equality, thus creating a "common minimum program" of rights for all citizens. It should be positioned as a release from the historical burdens of patriarchy, providing a shared legal identity where every woman's right to be treated with respect and to exercise her own will is guaranteed, no matter which temple, mosque, or church she goes to.

#### **THE UCC, CULTURAL PLURALISM, AND THE IMPERATIVE OF CONSTITUTIONAL MORALITY**

The major part of the resistance to the Uniform Civil Code (UCC) is based on the fear that it would go beyond the threshold of a very high standard set up for the diversity of cultures and religions in India and that it would also violate the basic right to practice one's religion (Article 25)<sup>1490</sup>. The critics of UCC consider that the introduction of the same law for everybody will lead to the extinction of diverse cultures and practices, and thus, the minority groups will be pushed to the corner and their customs destroyed, which usually take centuries to develop. Nevertheless, this interpretation of the situation is based on the blending of the religious and the patriarchal practices and is therefore unrealistic especially in the case of modern UCC which is at the same time progressive and also sensitive to pluralism while being strict about gender equality.

The idea of Constitutional Morality serves as the ultimate resolution to the contention. The application of Constitutional Morality means that all the constitutional rights and principles, equality, dignity and justice being the most important ones, are to be prioritized over any practice that is either traditional, cultural or religious but at the same time is conflictual with

<sup>1488</sup> Goa Civil Code, 1867 (The existing Uniform Civil Code in India).

<sup>1489</sup> The Special Marriage Act, 1954 (Provides for a secular, inter-faith marriage option).

<sup>1490</sup> See The Constitution of India, 1950, Article 25 (Freedom of Conscience and Free Profession, Practice and Propagation of Religion).

these rights and principles. The Indian Supreme Court has reiterated this principle many times and recently in the context of gender biased religious practices<sup>1491</sup>. The main duty of the Indian State and, the Constitution, is not only to protect all customs but also to transform those that are de facto once-those that deny fundamental rights to a part of the population. Looking at it this way, a personal law which endorses polygamy, gives unequal property rights to a daughter, or considers a man's unilateral divorce as valid, is not a religious practice but rather a practice of legalized gender violence which should not be tolerated in a modern, secular republic.

Moreover, the idea that the UCC will wipe out cultural diversity is an unrealistic assumption. The UCC is a civil law code that addresses family and property issues. It is not designed to form rules for religion, worship or culture that might be associated with marriage or other social occasions, festivals, and so on. For instance, a UCC would set a common minimum legal marriage age and the same reasons for divorce but would not specify whether the marriage is performed through saptapadi or nikaah. The emphasis is on the legal results of family relationships, thus providing equal support to all citizens and guaranteeing equal rights under the law.

Thus, the responsibility of the authors of the UCC is a regulatory measure that includes all, and principled reform rather than the only imposition. The drafters would need to work with a diverse group of people which should include women's rights organizations, legal experts, and community representatives who will identify and keep the really just customs while at the same time eliminating all discriminatory laws without exceptions. The goal should be a law code that is both gender-neutral and community-conscious, which would need to be done by taking the most progressive aspects of all existing traditions. For instance, some tribal

laws have better provisions than the general law for women's control over certain types of property, and it is these modern aspects that will be the basis of the new code. India's true pluralism should be mirrored in a legal system where the respect of the individual—their gender or community does not matter—is the supreme value, thus the UCC becomes a truly moral and progressive tool of the constitution by humanizing people.

### CONCLUSION

The quest for the Uniform Civil Code (UCC) in India is primarily a battle for women's rights. The UCC, although sometimes seen through the limited lenses of political opportunities or the dominance of religion, its importance in the long run is to break the stronghold of the institutionalized and legalized patriarchy that the current and fragmented system of personal laws has created. The latter system integrates diverse, often very old and conservative religious interpretations, into law and thus, indirectly imposes unequal citizenship by deciding rights of women in such crucial areas as marriage, divorce, and inheritance based on religion, which may be very ancient or modern.

In its discussion, this paper has made the case that a meticulously implemented UCC not only is a constitutional goal (Article 44) but an indispensable ethical commitment to the principles of equality (Article 14) and non-discrimination (Article 15) as well. The authors have gone painstakingly through existing laws, even the codified ones, and pointed out how these continue to be the source of gender biases and discriminate against women in the areas of maintenance, guardianship, and property rights and further, they have indicated the human cost of these disparities is so extensive that they are deeming an indefinite number of women to a lower legal status purely because of their gender.

The saga of the Hindu Code Bills powerfully affirms that social and legal reforms, no matter how violently opposed by the conservatives, are still possible and necessary for a country's

<sup>1491</sup> Subramanian Swamy v. Director, CBI (2014) 8 SCC 682 (Discusses the Doctrine of Constitutional Morality).

development. The main lesson is to give top priority to progressive reform over the standardization process. The UCC has to come out as a fusion—a new, secular, and gender-neutral code that picks up the best and the most just provisions from the existing laws instead of forcing one community's framework upon others. It should set a non-negotiable minimum standard of dignity and autonomy for every single female citizen.

The UCC is basically a test for India to grasp its basic principles at last. A nation cannot claim to be a modern, secular republic if the rights of women are still tied up with their religions through the legal systems. The successful implementation of the UCC does not mean the victory of one religion over another, nor does it imply the creation of a new, uniform citizenship; instead, it entails the triumph of the Constitution over customary practices,<sup>1492</sup> the triumph of the rights of individual over the oppressive traditions, and the establishment of a new, uniform citizenship. The only way forward is through a slow, participatory, and daringly reformed program that assures every woman in India, no matter which faith she belongs to, to be ruled by one law that is just for her gender. Thus, the UCC is the last unfulfilled promise of equality.



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<sup>1492</sup> Justice V. R. Krishna Iyer, *Constitutionalism and Religion* (A seminal text on the conflict between tradition and constitutional values).