

SYEDA NADIYA  
THE TAMILNADU DR.AMBEDKAR LAW UNIVERSITY  
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11no66@gmail.com

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# EXPLORING THE CONTRAVERSIES SURROUNDING THE UNIFORM CIVIL CODE

## Introduction:

The Uniform Civil Code (UCC) has been a contentious issue in Indian politics, aiming to establish a common set of civil laws that apply to all citizens regardless of their religion, gender or sexual orientation. And, it is crucial to delve into the historical context, the current legal framework and the challenges faced in implementing a UCC. This article will explore the various perspectives, examine relevant case laws and provide an objective analysis of the potential benefits and drawbacks of a Uniform Civil Code in India.

## Historical Background and Legal Framework:

The roots of the UCC debate can be traced back to the colonial era, where personal laws were formulated for Hindus and Muslims by the British Raj. After India gained independence, the framers of the Constitution considered the implementation of a UCC but ultimately included it in the Directive Principles of State Policy (DPSP) under Article 44. While DPSP is not enforceable by any court, it highlights the State's endeavor to secure a UCC throughout the territory of India. Currently, personal laws in India govern matters such as marriage, divorce, inheritance, adoption and maintenance for different religious communities. Article 25-28 of the Indian Constitution guarantees religious freedom, allowing religious groups to maintain their own affairs. Article 44, however, reflects the State's intention to formulate national policies based on directive principles and common law for all Indian citizens.

## Uniform civil code of Goa:

The only state in India has a uniform civil code in the form of common family law is Goa. The Portuguese Civil Code, which is still in use today, was first implemented in Goa in the 19th century and was left in place after the state was freed.

## Features:

- The progressive universal law of Goa allows for the equitable distribution of wealth and income between husband and wife as well as progeny (regardless of gender).
- Registration of every birth, marriage and death is required by law. There are numerous provisions for divorce.
- All assets and money owned or gained by each spouse during a marriage are kept jointly by the couple.

- Polygamy and triple talaq forbidden by Muslims who register their marriages in Goa.
- In the event of divorce, each spouse is entitled to half of the property and in the event of death, the surviving member's ownership of the property is divided.
- Parents cannot completely disinherit their offspring. At least half of their possessions must be left to their children. This inheritance must be distributed evenly among the children.

However, the code has some shortcomings and is not strictly a uniform code. For example, Hindu men have the right to bigamy under certain conditions outlined in the Gentile Hindus of Goa codes of usages and customs (if the wife fails to produce a kid by the age of 25 or if she fails to deliver a male child by the age of 30). Polygamy is illegal in other community.

### Legal provisions on uniform civil code:

“The state shall attempt to secure the citizen a uniform civil code throughout the territory of India” is laid out under Article 44 (Part IV) of the Indian Constitution.

However, according to Article 37 of the Constitution, the DPSP "shall not be enforceable by any court." Nonetheless, they are "fundamental to the country's governance." This means that, while our constitution believes that a Uniform Civil Code should be adopted in some way, it does not make it mandatory.

### Other constitutional provisions concerning religious freedom and secularism are as follows:

- Article 15- Makes it unlawful to discrimination based on religion, race, caste, gender or place of birth.
- Article 25- Freedom of conscience and free profession, practice, and spread of religion, subject to reasonable restrictions based on public order, health, and morality.
- Article 25 (2) regulates secular activities related to religious practices, social welfare, and reform.
- Article 26- Provides for the formation and administration of religious institutions.
- Article 27- Prohibits the state from levying a tax whose earnings are used to benefit a specific religion.
- Article 28 – Is concerned with religious instruction in educational institutions.

The phrase 'secularism' was inserted to the preamble in the 42nd Constitutional Amendment legislations. In the case of S.R.Bommai vs Union of India, the Supreme Court declared secularism to be a fundamental component of the constitution.

## Challenges in Implementing a Uniform Civil Code:

- **Cultural and Religious Sensitivities:** One of the primary challenges in implementing a UCC is the need to respect the cultural and religious sensitivities of diverse communities. The UCC should strike a balance between promoting uniformity and preserving the unique customs and traditions of various religious groups.
- **Constitutional Considerations:** The right to freedom of religion (Article 25), cultural and educational rights (Article 29 and 30) must be carefully weighed while formulating a UCC. It should not infringe upon these fundamental rights but rather enhance and uphold them in a more equitable manner.
- **Political Opposition:** The UCC has faced opposition from various political and religious groups, which hinders its progress. Political considerations and vote bank politics often play a significant role in shaping the discourse around the UCC, making consensus-building a challenging task.
- **Complexity in Codification:** Creating a comprehensive and coherent legal framework that covers all aspects of personal laws for different communities is a complex undertaking. It requires careful consideration and expertise to avoid inconsistencies and ambiguities in the UCC.

## Relevant Case Laws:

- **Bano Case Shah (1985):** The landmark Supreme Court judgment in Shah Bano case upheld the right of a divorced Muslim woman to receive maintenance under Section 125 of the Criminal Procedure Code. The Court recommended a UCC to ensure uniformity in maintenance laws and protect the rights of women from all religious backgrounds.<sup>1</sup>
- **Daniel Latifi Case:** The Supreme Court, while upholding the constitutionality of the Muslim Women's Act (MWA), harmonized it with Section 125 of the Criminal Procedure Code. It ruled that a divorced Muslim woman is entitled to maintenance for a lifetime or until remarriage.<sup>2</sup>
- **Sarla Mudgal Case:** This case dealt with the issue of whether a Hindu husband, after converting to Islam, could solemnize a second marriage. The Court held that the Hindu marriage can only be dissolved under the Hindu Marriage Act, and a second marriage solemnized after conversion would be an offense under Section 494 of the Indian Penal Code.<sup>3</sup>
- Personal laws are not "laws" within the meaning of Article 13 and so will not be included in the purview of Fundamental Rights established in Part III (Article 12-35) of the

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<sup>1</sup> Mohd. Ahmed Khan v. Shah Bano Begum and Ors, 1985 AIR 945, 1985 SCR (3) 844.

<sup>2</sup> Daniel Latifi v. Union of India, (2001) 7 SCC 740.

<sup>3</sup> Smt. Sarla Mudgal v. Union of India, 1995 AIR 1531.

Constitution, according to the High Court's decision in State of Bombay v. Narasu Appa Mali, 1952.<sup>4</sup>

### Pros of Implementing a Uniform Civil Code:

- **Equality and Gender Justice:** A UCC can eliminate discriminatory practices and promote gender equality by providing equal rights and protections to women across all religious communities.
- **Secularism and National Integration:** A UCC can reinforce India's secular ethos by emphasizing a common civil law for all citizens, fostering national integration and social cohesion.
- **Modernization and Relevance:** The UCC can bring personal laws in line with modern societal values, ensuring that legal frameworks are responsive to contemporary needs and challenges.
- **Simplification and Clarity:** A uniform code would simplify the legal system, reducing complexities and ensuring consistent application of civil laws.

### Cons of Implementing a Uniform Civil Code:

- **Infringement on Religious Freedom:** Critics argue that a UCC may infringe upon the right to practice religious beliefs and customs freely, which is guaranteed under Article 25 of the Constitution.
- **Cultural Erosion:** Opponents fear that a UCC might undermine the cultural diversity and traditions of different communities, leading to the erosion of cultural identities.
- **Potential Social Unrest:** Imposing a UCC without consensus and sensitivity to various concerns can lead to social unrest and resistance from religious and conservative groups.
- **Implementation Challenges:** The complex and diverse nature of personal laws poses challenges in codifying a UCC that effectively addresses the needs of all communities.

### Impact of uniform civil code on various communities:

#### Muslims:

Marriage, divorce and support shall all be controlled by Shariat or Islamic law, according to the Muslim Personal (shariat) Application Act of 1937. If the UCC is implemented, polygamy (having more than one wife at the same time) may be prohibited and the Shariat law's minimum age for marriage may be changed.

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<sup>4</sup> State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

### Sikhs:

The Anand Marriage Act of 1909 oversees marriage regulations among Sikhs. However, divorce is not permitted. In this situation, the Hindu Marriage Act covers Sikh divorces; however, if UCC is implemented, a common law will most likely apply to all communities and weddings registered under the Anand Act.

### Christianity:

The Uniform Civil Code will have an impact on Christian personal law concerns such as inheritance, adoption and succession but marriage and the Catholic Church's rejection of divorce will take more study.

### Hindu Undivided Family (HUF):

A Hindu Undivided Family (HUF) is a family made up of everyone who is directly descended from a single male ancestor. When UCC is implemented, it will have an impact on India's income tax legislation as well as succession planning. The Hindu Undivided Family (HUF) and the income tax benefits associated with it are expected to have a direct impact.

If the UCC is ever implemented, the HUF concept will be abandoned. If the Kerala Joint Hindu Family System (Abolition) Act, 1975 is not expressly integrated into the UCC, a modification to the Income Tax Act may be required.

### Parsi:

According to the Parsi Marriage and Divorce Act of 1936, any woman who marries a person of a different religion forfeits all rights to Parsi rituals and customs; however, this clause will be deleted if UCC is implemented. Adoptive females have no privileges in Parsi society, but an adopted boy is only allowed to officiate at his father's burial. As a result, if the UCC is adopted, all religious guardianship and custody rules will be uniform and this will be eradicated.

### Conclusion:

I would like to conclude that it is crucial to approach the issue of the Uniform Civil Code in India with a balanced perspective. While a UCC can promote equality, gender justice and secular values, it must be implemented with utmost care to respect cultural diversity and protect religious freedoms. Engaging in constructive dialogue and consensus-building among all stakeholders is essential to ensure that a UCC, if adopted, is a well-crafted legal framework that upholds the fundamental rights and aspirations of all Indian citizens.