

UNIFORM CIVIL CODE: ONE NATION ONE CIVIL LAW

Dr. Suyog S. Ingle

Head, Associate Professor

Department of Law

NMD College, Gondia

Email Id – adv_suyog@yahoo.co.in

Abstract:

The researcher in this research paper explores the importance and need of Uniform Civil Code. The Uniform Civil Code (UCC) embodies a vision for a unified set of personal laws that govern marriage, divorce, inheritance, adoption, and succession across all citizens, regardless of religion. The Directive Principles of State Policy under Article 44 of the Indian Constitution imposes a positive obligation on the State to achieve one nation one uniform civil law. The UCC aims to replace diverse personal laws with a common framework. It emphasizes national unity through legal uniformity irrespective of diverse society. The Uniform Civil Code is both a legal necessity and a social challenge. It embodies the vision of “One Nation, One Civil Law” by harmonizing personal laws while respecting India’s pluralistic ethos. The UCC is not about erasing cultural identities but about ensuring equality, justice, and national integration. A carefully shaped and phased approach can help India move towards this constitutional ideal. Judiciary has repeatedly lay emphasis on the importance of a UCC in landmark cases like Shah Bano (1985) and Sarla Mudgal (1995). In this paper the researcher discussed the legal, social and cultural impact on the society of UCC.

Keywords: Uniform Civil Code, Personal laws, National unity, Equality

Objectives:

1. To analyze the Constitutional mandate and judicial interpretation related to Article 44 advocating UCC
2. To compare Personal Laws
3. To explore how UCC can promote gender justice & equality
4. To assess public opinion and resistance among various religious and cultural groups
5. To evaluate the feasibility of implementing of UCC at national level by studying regional initiatives like Uttarakhand.

Research Methodology:

The researcher for writing this paper adopted doctrinal method. Relied on secondary resources, as the Constitution of India, Newspapers articles, various write-ups available on webpages

Introduction:

Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, ‘Uniform Civil Code’ is explicitly mentioned in Part IV, Article 44 of the Constitution states that “The State shall endeavor to secure the citizen a Uniform Civil



Code throughout the territory of India". However, Article 37 of the Constitution itself makes it clear the DPSP "*shall not be enforceable by any court*". Nevertheless, they are "*fundamental in the governance of the country*". This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

Personal laws in India are rooted in religious traditions. Hindus, Muslims, Christians, and others follow distinct laws governing personal matters. These laws were codified during British rule to accommodate India's diversity. Article 44 of the Indian Constitution outlines the State's responsibility to implement a UCC, emphasizing justice, equality, and national integration. However, its non-enforceable nature has delayed progress. During the framing of the Constitution, leaders like Dr. B.R. Ambedkar supported the UCC to promote equality, while others resisted it, fearing a threat to religious freedom and cultural identity. Different personal laws create inequalities, particularly concerning gender. A UCC ensures all citizens are treated equally under the same legal framework. Personal laws often perpetuate discrimination, especially against women. A UCC can address issues like unequal inheritance rights, triple talaq, and child marriage. Diverse legal systems lead to contradictions, complicating the judicial process. A UCC simplifies legal interpretation and application. A UCC fosters unity by promoting a shared legal identity while reducing inter-community tensions. India's pluralistic society values the autonomy of religious communities, making the UCC seem intrusive to some. Religious and political groups often view the UCC as an attack on their traditions, fearing erosion of their identity. Critics argue it may impose majoritarian values, but proponents insist it upholds secularism and constitutional equality. Lack of consensus among political parties and sensitivity in judicial decisions has slowed UCC implementation.

Challenges in implementing UCC :

India is a country of diverse religions, cultures and traditions. Each community has its own set of personal laws and customs that govern their civil matters. These laws and practices vary widely across regions, sects and groups. To find a common ground and uniformity among such diversity is very difficult and complex. Moreover, many personal laws especially Muslim Law, Laws applicable on tribes p\of India are not codified or documented, but are based on oral or written sources that are often ambiguous or contradictory.

Many religious and minority group's view UCC as an infringement on their religious freedom and cultural autonomy. They fear that UCC would impose a majoritarian or homogenous law that would disregard their identity and diversity. They also argue that UCC would violate their constitutional rights under Article 25, which guarantees the freedom of conscience and free profession, practice and propagation of religion.

There is a lack of political will and consensus among the government, the legislature, the judiciary and the civil society to initiate and implement UCC. There are also apprehensions that UCC could provoke communal tensions and conflicts in the society.

Article 25 of Indian Constitution, that seeks to preserve the freedom to practice, profess and propagate any religion gets into conflict with the concepts of equality enshrined under Article 14 of Indian Constitution and the uniformity in their personal laws might

offend their religious practice.

UCC would require a massive exercise of drafting, codifying, harmonising and rationalising the various personal laws and practices in India. It would require a wide consultation and participation of various stakeholders, including religious leaders, legal experts, women's organisations, etc.

The positive aspects of UCC :

The incorporation UCC may promote national integration and secularism by creating a common identity and sense of belonging among all citizens. It may also reduce the communal and sectarian conflicts that arise due to different personal laws. It can uphold the constitutional values of equality, fraternity and dignity for all. UCC would ensure gender justice and equality by removing the discrimination and oppression faced by women under various personal laws. It would grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance, etc. It would also empower women to challenge the patriarchal and regressive practices that violate their fundamental rights. UCC would simplify and rationalize the legal system by removing the complexities and contradictions of multiple personal laws. It would harmonize the civil and criminal laws by removing the anomalies and loopholes that arise due to different personal laws. It would make the law more accessible and understandable for the common people.

The UCC may modernize and reform the outdated and regressive practices that are prevalent in some personal laws. It would eliminate the practices that are against the human rights and values enshrined in the Constitution of India, such as triple talaq, polygamy, child marriage, etc. It would also accommodate the changing social realities and aspirations of the people.

Dynamic Role of Indian Judiciary towards stressing the reform in UCC :

Shah Bano Begum v. Mohammad Ahmed Khan (1985): The Supreme Court upheld the right of a Muslim woman to claim maintenance from her husband under Section 125 of the Criminal Procedure Code, even after the expiry of the Iddat period. It also observed that a UCC would help in removing contradictions based on ideologies.

Sarla Mudgal v. Union of India (1995): The Supreme Court held that a Hindu husband cannot convert to Islam and marry another woman without dissolving his first marriage. It also stated that a UCC would prevent such fraudulent conversions and bigamous marriages.

In Shayara Bano v. Union of India, 2017 the Supreme Court of India declared triple talaq (instantaneous talaq-e-biddat) as unconstitutional. This case can be said to be step towards the Uniform Civil Code (UCC) because it highlights issues of gender justice, equality, and the conflict between personal laws and constitutional principles.

Shayara Bano v. Union of India (2017): The Supreme Court declared the practice of triple talaq as unconstitutional and violative of the dignity and equality of Muslim women. It also recommended that the Parliament should enact a law to regulate Muslim marriages and divorces.

UCC from the perspective of poverty alleviation and prevention of population explosion :

The UCC should reflect India's multi-culturalism and preserve its diversity. The Indian Constitution allows for both integrationist and restricted multicultural approaches to accommodate cultural differences. It involves a broad range of stakeholders, including religious leaders, legal experts, and community representatives, in the process of developing and implementing the UCC. This could help to ensure that the UCC takes into account the diverse perspectives and needs of different groups, and that it is seen as fair and legitimate by all citizens. The Indian Constitution upholds the right to cultural autonomy and aims for cultural accommodation. Article 29(1) protects the distinctive culture of all citizens. Muslims need to question whether practices like polygamy and arbitrary unilateral divorce align with their cultural values. The focus should be on achieving a just code that promotes equality and justice.

By implementing UCC will promote national integration and secularism by removing the distinctions and contradictions based on religious personal laws and creating a common identity for all citizens. It would also foster a sense of unity and harmony among diverse communities. For example, UCC would enable inter-faith marriages and relationships without any legal hurdles or social stigma.

It will ensure gender justice and equality by abolishing the discriminatory and oppressive practices against women in various personal laws, such as polygamy, unequal inheritance, etc.

India's current legal system is **burdened with complex and overlapping personal laws, leading to confusion leads to multiple legal disputes.** A UCC would **simplify the legal framework** by consolidating and harmonizing various laws into a single code. This would enhance clarity, ease of implementation, and reduce the burden on the judiciary, ensuring a more efficient legal system.

Many countries across the **world have implemented a uniform civil code, e.g. France** A UCC is the sign of a modern progressive nation implying that it has **moved away from caste and religious politics.**

Some have in their mind have some fear related to UCC as it might be a threat to Minority Rights: India's strength lies in its diverse society, and personal laws have been developed to accommodate these diversities. Critics argue that **imposing a single code might undermine the cultural and religious autonomy of minority communities**, leading to feelings of alienation and marginalization.

They advocated that implementing a UCC could exacerbate the situation. The **extensive legal reforms necessary to harmonize personal laws into a single code requires significant time and effort.** Consequently, **during this transitional period, the legal system may experience an increased burden** due to the emergence of new cases challenging the constitutionality of the UCC.

Complexities within UCC in Goa: Goa's implementation of a UCC has been praised by the Supreme Court in 2019. However, the ground reality reveals complexities and legal pluralities within the state's UCC. The UCC in Goa permits a specific form of polygamy for Hindus and does not extend the Sharia Act to Muslims (they are governed by Portuguese and Shastric Hindu laws). Additionally, Catholics enjoy certain privileges, such as exemption from marriage registration and the ability of Catholic priests to dissolve marriages. This highlights the complexity of personal laws in India, even within a state known for implementing a UCC.

The Uniform Civil Code of Uttarakhand Act, 2024 made a significant milestone as Uttarakhand becomes the first Indian state for the enactment of UCC after Goa. The Act establishes a unified set of personal laws governing matters like marriage, divorce, inheritance, and maintenance, applicable to all irrespective of religion, gender, caste, or sex. The Act was passed by the Uttarakhand Legislative Assembly on February 7, 2024, and received presidential assent on March 13, 2024 is expected to implement from January, 2025.

Important Provisions of the Act: Act Sets the minimum marriageable age at 18 for women and 21 for men. It mandates compulsory registration of all marriages within six months. Establishes uniform grounds for divorce, including cruelty, adultery, desertion, and mental illness. Grants equal inheritance rights to sons and daughters, eliminating distinctions between ancestral and self-acquired property. Implements a uniform set of inheritance rules based on the deceased's relationship to heirs, regardless of religious affiliation. It requires live-in couples to register their relationships within one month of the Act's implementation. It ensures legal rights for children born to partners in registered live-in relationships, including inheritance and maintenance. It bans the practice of polygamy for all individuals. It reinforces the national prohibition on child marriage. It has introduced strict penalties for non-compliance and providing false information. But the Act does not apply to members of Scheduled Tribes, allowing them to continue following their customary personal laws. The enactment of the UCC in Uttarakhand is a pioneering step toward uniform personal laws in India, aiming to promote equality and simplify legal processes across diverse communities.

Suggestions for Implementing a Uniform Civil Code :

To realize the goals of the DPSP and to maintain the uniformity of laws, the following suggestions need immediate consideration:

1. A progressive and broadminded outlook should be encouraged among the people to understand the spirit of the UCC. For this, education, awareness and sensitization programmes must be taken up.
2. The Uniform Civil Code should be drafted keeping in mind the best interest of all the religions.
3. A committee of eminent jurists should be constituted to maintain uniformity and care must be taken not to hurt the sentiments of any particular community.
4. The matter being sensitive in nature, it is always better if the initiative comes from the religious groups concerned.

Conclusion:

The citizens' Fundamental Rights to equality before law and equal protection of the laws' guaranteed by the Constitution contradict the right guaranteed under Article 25, 26, 29 and 30 of the Constitution of India. Certainly the researcher has strong view as UCC would ensure gender justice and equality by removing the discrimination and oppression faced by women under various personal laws. It would grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance, etc. Our Parliamentarian must understand the practice and process of the nations like France and the United States who has implemented civil laws that apply uniformly to all citizens, regardless of religion. These countries demonstrate that uniform laws could coexist with cultural diversity if implemented inclusively. The researcher feels that instead of imposing the UCC in one go reform could be introduced in phase begin with addressing the most discriminatory practices first like taken steps in Shayara Bano case. Public awareness campaigns can oust myths and highlight the benefits of a UCC might be fruitful and most important is having constructive conversation with religious and community leaders is essential for building consensus.

Reference:

- The Constitution of India.
- The Portuguese Civil Code, 1867
- The Goa, Daman and Diu Administration Act of 1962
- M.S Ratnaparkhi, 'Uniform Civil Code: An Ignored Constitutional Imperative'
- Partha S. Ghosh, 'The Politics of Personal Law in South Asia: Identity, Nationalism and Uniform Civil Code'
- drishtias/daily-news-analysis/uniform-civil-code-4/ 27 Jun 2023
- byjus/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/