

Critical Analysis of Uniform Civil Code (UCC)

**Ms. R Subashini Ramamoorthy¹, Mr. Mithun N Narayanasamy²,
Ms. Kaviyarasi K Kaviyazhagan³**

^{1,2,3} Student, BBA LLB (Hons), Dhanalakshmi Srinivasan University

Abstract

Although the foundation of our Indian constitution is unity in diversity, there is actually no unity among peoples. The nation's major religious communities' scriptures and rituals serve as the foundation for the personal laws that people adhere to. The goal of the Uniform Civil Code (UCC) is to eliminate all rules pertaining to inequality among Indian residents and to replace personal laws. It demands the creation of a single Indian legislation that would include issues like marriage, divorce, inheritance, and adoption for all religious sects.

The code is based on Article 44¹ of the Constitution, which states that the state should strive to establish a Uniform Civil Code for all Indian citizens. "No one wants to be anxious that if the State has the power and it will tout de suit execute... that power may be found to be challengeable by the Mohammedans or by the disciples or by any other community," Ambedkar stated during his speech in the Constituent Assembly. He believes that if the government did it, it would be insane.

The UCC seeks to support national unity and integrity while protecting vulnerable groups, including as women and religious minorities, as envisioned by Ambedkar. The created code will attempt to make sense of laws that are now divided based on religious views, such as Christian laws, Shariat law, and the Hindu code bill. This paper explores the reasons behind the parliament's refusal to approve and implement the UCC bill. Our intriguing query was that although people are not inherently divided, laws undoubtedly cause them to be. Today, the UCC is absolutely necessary.

Keywords: Unity in diversity, Uniform Civil Code, Inequality, Article 44 of Indian Constitution, Personal laws, National Unity and Integrity.

1. INTRODUCTION:

Overview of personal laws

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¹ The Constitution of India, art.44.

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As a result, new laws addressed a wide range of subjects that were previously thought to be outside the purview of the legislative branch, such as marriage, succession, caste, inheritance, etc. Among the important laws passed for Hindus are,

- Hindu widow remarriage Act, 1856. ²
- The Child Marriage Restraint Act, 1929. ³
- The Hindu Marriage Act, 1955. ⁴
- The Hindu Succession Act, 1956. ⁵
- The Hindu Adoption and Maintenance Act, 1956. ⁶
- The Hindu Succession (Amendment) Act, 2005. ⁷

Muslim laws:

One of the world's oldest and most extensive legal systems is Islamic law, also referred to as Sharia. It comes from the faith of Islam, which was established in the Arabian Peninsula in the early seventh century AD by the Prophet Muhammad. The Hadith, which are the recorded sayings and deeds of Prophet Muhammad, and the Quran, the sacred book of Islam, provide the fundamental tenets of Islamic law. These foundational works cover a wide range of social, legal, and personal issues and offer Muslims a moral and legal framework. The following are some important Islamic laws,

- The Muslim Personal Law (Shariat) Application Act, 1937. ⁸
- The Dissolution of Muslim Marriages Act, 1939. ⁹
- The Muslim Women (protection of rights on Divorce) Act, 1986. ¹⁰
- The Muslim Women (protection of rights on Marriage) Act, 2019. ¹¹

Christian Laws:

In India, Christian personal law is mostly codified and regulated by a number of statutes. While Christian personal law is subject to recurring legal challenges and adjustments to address concerns of gender justice and harmony with modern social norms, it strives to ensure that personal matters are treated uniformly within the community. Christian laws contain the following regulations.

- Indian Christian Marriage Act, 1872. ¹²
- The Indian Divorce Act, 1869. ¹³

² The Hindu Widows' Remarriage Act, 1856, No. 15, Acts of Parliament, 1856 (India).

³ The Child Marriage Restraint Act, 1929 (India).

⁴ The Hindu Marriage Act, 1955 (India).

⁵ The Hindu Succession Act, 1956 (India)

⁶ The Hindu Adoptions and Maintenance Act, 1956 (India).

⁷ The Hindu Succession (Amendment) Act, 2005, No. 39 (India).

⁸ Muslim Personal Law (Shariat) Application Act, 1937, Act No. 26 of 1937, § 1 (India).

⁹ Dissolution of Muslim Marriages Act, 1939, Act No. 8 of 1939 (India).

¹⁰ Muslim Women (Protection of Rights on Divorce) Act, 1986, Act No. 25 of 1986 (India).

¹¹ Muslim Women (Protection of Rights on Marriage) Act, 2019, Act No. 20, 2019.

¹² Indian Christian Marriage Act, 1872, 15 India Stat. (1872)

¹³ The Divorce Act, 1869, Act No. 4, 1869

- The Indian Succession Act, 1925. ¹⁴

Parsi Laws:

The Parsis, a tiny but important group in India, have established personal rules of their own. These laws are intended to maintain the integrity of the society while offering a formal legal framework for private affairs. They are,

- The Parsi Marriage and Divorce Act, 1936. ¹⁵
- The Parsi Intestate Succession Act, 1865. ¹⁶

Sikh Laws:

Although there are specific regulations that cover particular areas of Sikh traditions and rituals, Sikhs in India are mainly subject to Hindu personal laws. Sikh personal law, however, frequently integrates community-specific customs. In situations like marriage, where the Anand Karaj ceremony is essential, and inheritance, where customs may affect how property is distributed, these conventions are very important.

They are,

- The Anand Marriage Act, 1909. ¹⁷
- The Hindu Marriage Act, 1955, Hindu Succession Act, 1956, and other related statutes are applicable to Sikhs, as they are considered a part of the broader Hindu legal framework.

First Implementation of the Uniform Civil Code

One could argue that Goa was the first successful implementation of the UCC in India. The 1867 Portuguese Civil Code, whose provisions are still in effect today as the Goa Civil Code, persisted after Goa was seized by India in 1961. This rule sets a precedent for future UCC implementation throughout India because it applies consistently to all Goans, regardless of their religious beliefs.

Goa's Civil Law:

Marriage, divorce, inheritance, and succession are all governed by the Goa Civil Code, also known as the Portuguese Civil Code of 1867.

Uniformity in Marriage rules: Goa's marriage rules are the same for everyone, regardless of faith, in contrast to other regions of India. For instance, not all religions, including Muslims and Hindus, allow polygamy.

Equal Property Rights: Every son and daughter is granted equal rights to a parent's property under the code.

¹⁴ The Indian Succession Act, 1925, Act No. 39, 1925

¹⁵ The Parsi Marriage and Divorce Act, 1936, No. 3 of 1936.

¹⁶ The Parsi Intestate Succession Act, 1865, No. 21 of 1865.

¹⁷ The Anand Marriage Act, 1909, No. 7, Acts of Parliament, 1909.

- **Common Divorce Laws:** In Goa, there are common Christian divorce laws throughout the society, in contrast to other regions of India where divorce laws differ depending on the faith.
- **Inheritance Rights:** In order to prevent arbitrary wills that could deny children or the spouse their rightful portion, the law stipulates that legitimate heirs must inherit at least half of a family's inheritance.

The Goa model, which unifies various communities under a single legal framework to guarantee justice and equity in gender-related concerns, is frequently cited as a model for establishing a UCC on a national level.

Uniform Civil Code (UCC) in Uttarakhand:

On January 27, 2025, the government of Uttarakhand formally implemented the Uniform Civil Code (UCC), becoming the first state in India to do so after independence.

The State Assembly ratified the UCC in February 2024; it excludes Scheduled Tribes and people who have left the state.

Key features:

As a constitutional measure, UCC seeks to guarantee women's empowerment and eradicate discrimination. It does not discriminate on the basis of gender, caste, or religion and instead advocates equality. In order to safeguard their rights, Scheduled Tribes as established by Article 342¹⁸ of the Constitution are exempt from the UCC.

Banned Practices: Muslim Personal Law forbids talaq, iddat, and halala.

Equal Rights for Women: Guarantees equal rights to inheritance and property.

Required Online Enrollment: Live-in partnerships, marriages, and divorces must be registered on the official website ucc.uk.gov.in.

Important Supreme Court rulings and judicial interpretations

The Supreme Court of India has ruled in the following judgments, highlighting the need for a consistent civil code over time:

In the Sarla Mudgal Case. ¹⁹ the Supreme Court decided that it would be lawful for Hindu men to convert to Islam purely for the purpose of polygamy. The decision was the strongest argument in favor of a uniform civil code.

Mohd. Ahmad Khan v. Shah Bano Begum. ²⁰

A clause in Islamic law known as Triple Talaq, or Talaq-e-bidat, allows Muslim males to immediately divorce their wives by saying or expressing the word "Talaq" three times without the involvement of the government. In a patriarchal setting like India, where many women rely on their husbands for financial support, this practice puts women in a precarious position by enabling men to divorce their spouses without their agreement.

¹⁸ The Constitution of India, art.342

¹⁹ AIR 1995 SC 945

²⁰ AIR 1985 SC 1531

Shayara Bano v. Union of India. ²¹

Muslims adopt a custom known as Nikah Halala, which combines the terms "nikah" (marriage) and "halala" (making anything permissible or halal).

If a woman wants to remarry her ex-husband after being divorced by triple talaq, she must go through a particular process. It involves getting married to another guy, consummating the union, and then filing for divorce. She can't remarry her ex-husband till this process is finished.

Sameena Begum v. Union of India. ²²

In addition to the aforementioned customs, it has been noted that people were traditionally deemed eligible for marriage after they entered puberty, which usually occurred around the age of 15. The Prohibition of Child Marriage Act (2006), which sets the legal minimum age for marriage at 21 for boys and 18 for girls, has superseded this Muslim law requirement. The current legal age for marriage in India is still in line with the Act, despite important cases in several High Courts with differing interpretations of the legislation.

Jose Paulo Coutinho case. ²³

The Supreme Court questioned why other states could not adopt a similar approach, pointing out that Goa already had a Uniform Civil Code.

Recent Developments and the Future of the UCC:**Bharatiya Nagarik Suraksha Sanhita, 2023 and UCC**

The Indian Penal Code will be replaced by the Bharatiya Nagarik Suraksha Sanhita, however it does not specifically address the UCC. It demonstrates the government's intention to update India's entire legal system. It is anticipated that the movement for a UCC will come after more extensive legal changes. The Law Commission's Report on Current Government Initiatives According to the Law Commission's status reports, UCC is not now necessary or in the public interest. However, in 2023, the government expressed a renewed interest in the topic by looking for new ideas.

State-Level Initiatives: As the first Indian state to legally enact a UCC bill in 2023, Uttarakhand may have paved the way for other governments to follow suit.

Only in Goa, where a unified civil code has been in place since colonial control, has the UCC been implemented thus far. Goa serves as an example, but implementing a UCC throughout all of India is still a very difficult process that calls for striking a balance between concerns of female equality and national unity, as well as religion and its purported right to exist.

The UCC argument is probably going to get more heated based on the spiraling rhetoric on legal revisions.

²¹ AIR 2017 SC 4609

²² (2018) 16 SCC 458

²³ (2019) 13 SCC 1

Conclusion:

The Hon. Mr. Justice V.R. Krishna Iyer's statement that "a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies" highlights the necessity of a uniform civil code.²⁴ The Uniform Civil Code has the potential to erode people's religious convictions even while it has many beneficial consequences on society, such as easier administration, less discrimination, gender equality, and the protection of women's rights. Significant constitutional adjustments must be made by Parliament in order to implement such a code, and national education and awareness efforts are required because many people are unaware of the concept.

²⁴ V.R. Krishna Iyer, Strategy Towards a Uniform Civil Code, DVK J., Feb. 21, 1986, at 219.