
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

UCC: RELIGIOUS PLURALISM AND ITS IMPLICATIONS- Aisha Adil¹**ABSTRACT**

This study paper delves into the convoluted realm of India's Uniform Civil Code (UCC), with a particular emphasis on the peculiar situation in Goa. The UCC, a long-standing constitutional command established in Article 44, attempts to bring together personal laws from many faith communities in order to improve social and legal harmony. However, making the UCC a reality has been difficult, particularly in a varied and multicultural society like India. The study delves into the specifics of Articles 14, 25, and 44 of the Indian Constitution and how they sometimes conflict with the UCC.

What's more, the paper discusses a new concept known as the "Option to Choose" model. Individuals can choose between their personal laws and the UCC under this novel approach. In this way, it attempts to strike a balance between the right to religious freedom (Article 25) and the principles of equality and non-discrimination (Article 14). The paper investigates whether this option is practical and what legal implications it may have, providing insights into how it may bring personal laws together.

Finally, the research paper contributes to the ongoing discussion about the Uniform Civil Code by thoroughly analyzing the Goa Civil Code and its relationship to Articles 14, 25, and 44. The "Option to Choose" model adds a new perspective, implying that it could lead to a more inclusive and harmonious coexistence of personal laws and the UCC. This reflects India's diverse culture while adhering to the principles of justice and equality. The opposition claims that imposing a single set of laws on all citizens may not be appropriate in a country with such

¹ Anjuman-I-Islam's Barrister A.R. Antulay College of Law

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

diverse religious and cultural practices. These concerns add to the ongoing debate and challenges surrounding India's adoption of a Uniform Civil Code.

Keywords: Uniform Civil Code, Religion, Diversity, Option to Chose

INTRODUCTION

Article 44 of the Indian Constitution² states that the government should strive for a uniform civil code (UCC) for all citizens across the country. This concept is consistent with human rights principles, focusing on equality, fairness, and justice. However, the article does not define what a "uniform civil code" is. A UCC is essentially a set of laws governing personal matters such as marriage and property that apply to all Indian citizens, regardless of religious affiliation. It is a secular code that is not influenced by specific religious doctrines.

The UCC's origins can be traced back to colonial India, with the British government emphasizing the need for uniformity in Indian law in 1835. This was especially emphasized for crimes, evidence, and contracts, excluding Hindu and Muslim personal laws.³As personal legislation became more prevalent near the end of British rule, the B N Rau Committee was formed in 1941 to codify Hindu law. Based on the committee's recommendations, the Hindu Succession Act of 1956 was enacted. Despite this, Muslims, Christians, and Parsis continued to have separate personal laws.

The Indian Constitution's framers envisioned the UCC as a way to unify the country's diverse religious and customary laws. Currently, various religious communities, such as Hindus, Muslims, Christians, and others, have different personal laws that govern family and personal matters based on their respective religious scriptures, customs, and traditions. The debate over implementing a UCC has raged on for decades. Its supporters argue that it would promote equality and secularism by ensuring that all citizens are subject to the same legal framework. They believe it has the potential to end discrimination against women and marginalized groups,

²**Article 44 in The Constitution of India 1949-** Uniform civil code for the citizens The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India

³*See generally* What is Uniform Civil Code? Here's everything you need to know about the law, its origin & current status-wionews.com

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

resulting in a more inclusive society. In India, the UCC aims to replace existing personal laws based on the scriptures and customs of each major religious community with a unified set that applies to all citizens, regardless of faith. If implemented, it would simplify personal laws that are currently divided based on religious beliefs, such as Hindu Law and Shariat Law, contributing to a more unified legal framework for all citizens.

Opponents, on the other hand, are concerned that a UCC will limit religious freedom and cultural autonomy. They argue that personal laws should be based on religious and customary practices, and that imposing a uniform code could erode different communities' distinct identities.

BALANCING UNIFORMITY AND DIVERSITY

The Shah Bano case in 1985 was a significant moment in history involving the Rajiv Gandhi government and Muslim women. There was talk about creating a Uniform Civil Code (UCC) for the entire country in that case. This entails having a set of laws that everyone follows, spanning different communities.⁴

The Shah Bano decision mentioned the idea of a UCC, implying that it could aid in national unity by removing conflicting laws from various communities. However, it also stated that convincing every community to readily agree to such a change may be difficult.

In a different case, *Union of India v. Lily Thomas*, the Supreme Court held that the government could not be pressured into enacting a UCC. The court did, however, continue to stress how crucial it is to have a common body of laws, particularly when it comes to succession.⁵

The *Sarla Mudgal* case, 1995,⁶ decision was heralded as precedent for the Uniform Civil Code, and it mentioned other situations where personal laws of different religions clashed. The second marriage of Hindu Husband was declared void under Section 494 of the Indian Penal Code. In the judgment, Justice Kuldip Singh stated, "When more than 80% of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any longer, the introduction of "uniform civil code" for all citizens in the territory of

⁴Mohd. Ahmed Khan v. Shah Bano Begum and Ors on 23 April (1985) SCR (3) 844}

⁵Lily Thomas, etc. v. Union of India & Ors on 5 April, (2000) 6 SCC 224

⁶Sarla Mudgal, President, Kalyani v/s Union of India, 1995 AIR 1531

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

India. There was a request to the government to reconsider Article 44 of the Indian Constitution, which proposes a uniform civil code for citizens.

The petitioner, argued that the Sarla Mudgal Judgment would render the second wife's status as that of a concubine and children born of that wedlock as illegitimate. However, the Hon'ble judges ruled that this issue is not involved in the current case. We are considering the consequences of a second marriage through the first marriage, despite the husband's conversion to Islam, for the restricted purpose of determining his criminal responsibility under Section 17 of the H.M. Act read with Section 494 of the IPC.

In order to modernize and depart from customary Hindu law, Dr. Ambedkar fervently advocated for the establishment of a UCC. However, this idea was met with resistance because the leaders of the day, such as Nehru, understood that achieving uniformity would take time. Thus, in 1950, the Directive Principles of State Policy, which became Article 44 of the Constitution, included a UCC as a future objective instead of implementing one right away. According to this article, the state ought to make an effort to establish a UCC for every resident.⁷

The phrase "state shall attempt to secure," however, seems to be a recognition that enforcing uniform laws across the board is a difficult undertaking. Many experts believe that this clause lacks a defined timeframe for implementation and is imprecise. Some even view it as less of an immediate plan and more of a distant objective. However, it is considered by some legal experts as a guiding principle.⁸

To put it simply, the notion of having universally applicable laws has existed for some time, but it is a difficult undertaking. Although it is stated in our Constitution, its exact meaning is somewhat ambiguous, and implementing it is thought to be a challenging and continuous process.

⁷See generally, lawboomi.com ~ Uniform Civil Code in India

⁸Ibid

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Instead of going the traditional route with the UCC, India tried something new in the early 2000s. They devised a unified system of personal law. It's like blending old and new laws, allowing Hindu and Muslim laws to coexist with new changes.⁹

Surprisingly, this approach was effective. Despite reservations, it proved to be an effective method of managing diversity through the legal system. Reforms implemented after 2001, addressing issues such as post-marital support and gender disparities, demonstrated that India could combine traditional and modern ideas. The 2007 Maintenance and Welfare of Parents and Senior Citizens Act¹⁰ is an example of a blended approach. This law extends adult children's responsibility to provide maintenance to their elderly parents, regardless of religion. It combines the traditional Indian value of filial responsibility with a modern understanding of the state's role in ensuring senior citizens' well-being. The best part? India did not imitate the West; instead, they chose a system that recognizes their unique challenges.¹¹

This legal journey is not easy, but it is effective. Through a clever legal framework, India is showing the rest of the world how to deal with cultural diversity. It's as if they're combining ancient wisdom with new solutions to distinguish their legal path.

CASE STUDY: GOA UNIFORM CIVIL CODE

The Goa Uniform Civil Code is frequently cited as a model when debates about the need for a uniform civil code erupt across India. While the Goa Civil Code, established by the Portuguese in 1867, has been in effect in the state for a long time, it is not without flaws. Article 44 of the Indian Constitution advocates for a Uniform Civil Code, with the goal of creating consistent rules for various adjudicatory processes across the country. Since 1997, the Bhartiya Janata Party has proposed the Portuguese Civil Code as a model for the UCC. Despite differing opinions on its merits, the Common Civil Code, which has been in effect since 1867 during Portuguese rule in Goa, is frequently proposed as a solution to gender disparities and male-centric personal laws in India.

⁹See generally The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda, Werner Menski, German Law Journal, [Vol. 09 No. 3 2008]

¹⁰The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted to help senior citizens with financial security, welfare, and protection. The Act was initiated by the Ministry of Social Justice and Empowerment, Government of India.

¹¹Ibid of 7

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

However, even though the UCC in Goa has been held up as a model for the rest of the country and hailed as the sole remedy for injustice and violation of women's rights, it is necessary to deconstruct and analyze the Code to determine whether it truly provides equality as claimed. Does the Code contain uniform provisions? Why has it been kept in Goa over so many years?

A closer examination of the Goa Civil Code, however, raises concerns about its true uniformity in provisions. This paper delves into the Goa Civil Code's history, marriage, divorce, and property succession laws to assess its success in upholding uniformity principles.

When the Portuguese took over Goa in 1511, attempts to convert Hindus to Christianity were met with a variety of measures, including the destruction of Hindu temples. In the 1540s, a strategy emerged that allowed Hindu women to inherit their father's property if they converted to Christianity. Despite these efforts, the conversion process was slow.¹²

Dealing with legal issues for the diverse population of Hindus, Thomas Christians, converted Indian Christians, and Portuguese residents became increasingly complicated as Portuguese authority expanded. The establishment of the Inquisition in 1560 added to the legal difficulties. In 1526, attempts to codify Hindu property and inheritance laws were met with opposition.¹³

The Portuguese eventually accepted legal plurality and respected Hindu legal norms. However, after the Inquisition, Hindus faced increased harassment. Despite allegations of Hindu influence, Thomas Christians maintained their practices under the authority of the Syrian patriarch recognized by the Vatican.¹⁴

Civil law experimentation continued until the introduction of the Portuguese Civil Code (PCC) in 1867, which was implemented in Goa in 1870 and amended in 1910 and 1946. While it is uniform for all communities, it contains specific provisions for specific sections. Despite its historical complexities, the Goa Civil Code has survived and is still in use in the state.¹⁵

¹²See generally The Politics of Personal Laws in South Asia- Identity, Nationalism and Uniform Civil Code by Partha S. Ghosh

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Uniform Civil Code of Goa:¹⁶¹⁷

Similar to the religious differences in marriage laws for the rest of India, Goa's marriage laws are divided into three categories: Catholics who marry within the Church, Catholics who choose to marry outside the Church, and non-Catholics. The Code of Gentile Hindu Usages and Customs of Goa for Hindus¹⁸. The GCC contains provisions for family law, specifically marriage, in articles 1056 to 1239¹⁹.

- Under Article 1073²⁰ of the Goa Civil Code, marriage cannot take place between (i) relatives by consanguinity or affinity in a direct line, and (ii) those who have another spouse with whom their marriage has not been dissolved also known as bigamy, polygamy is not permitted under this law.

Goa Civil Code prohibits bigamy for all other religions except for Hindus, Hindu men have the right to bigamy under specific circumstances mentioned in the Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30).

While the UCC was imposed primarily to provide a standard for women in society, this act may be discriminatory towards them.

1. Gender Bias: This provision places the burden of bearing a male child solely on the woman. It assumes that a woman is responsible for determining the sex of the child, which is scientifically incorrect. The determination of a child's sex is determined by the biological contribution of both parents, the man and the woman. Placing the blame on the woman for not bearing a male child, reinforces gender bias and perpetuates the notion that a male child is more desirable or valuable than a female child.
2. Discrimination against Women: This provision discriminates against women by suggesting that their worth or value is dependent on their ability to bear a male child. It

¹⁶GOA CIVIL CODE: IS IT UNIFORM? Written by Manya Rai, Jindal Global Law School, published by Indian Journal of Integrated Research in Law Volume II Issue I | ISSN: 2583-0538

¹⁷ The Politics of Personal Laws in South Asia- Identity, Nationalism and Uniform Civil Code by Partha S. Ghosh

¹⁸The Code of Usages and Customs of Gentile Hindus was **enacted in 1880**

¹⁹Portuguese Civil Code, 1867, Part II, Title II- Chapter I: Marriage

²⁰Article 1073 - Impediments to civil marriage

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

undermines the dignity and rights of women by reducing their role in childbearing and prioritizing the birth of a male child over other aspects of their lives and identities.

Although the right of marrying more than one wife is solely granted to Hindu men under Goa's civil code, where bigamy is a crime, and not to Muslims, where polygamy is permitted, it may appear discriminatory and unjust towards Muslims. The Muslim Personal Law allows for polygamy under certain conditions, while the Hindu Personal Law prohibits it. By permitting polygamy for Hindu men in Goa but not for Muslim men, it establishes an inequality in the application of personal laws according to religious affiliation.

- Article 1057²¹ of the GCC requires the registration of marriages in the State.

The provision differentiates the procedure for registration among Catholic and non-Catholic marriages. Additionally, the intent of marrying has to be recorded in Goa, after which the partners proceed to sign the marriage deed. It is interesting to note that while signatures in Churches are enough for a Catholic couple to be married as per civil registration, the same does not apply to non-Catholics. Further, it is found that many women are not aware of the UCC requiring a subsequent second confirmation through signatures as a result of which, if differences arise, the marriages are found to be invalid or void.²²

- Article 1086²³ of this Code also empowers Ecclesiastical Courts to nullify Catholic marriages. Usually, the judicial court also recognizes such nullification. However, in the case of non-Catholics, the power to nullify marriages lies only with the civil courts, thus raising questions about the nature of uniformity between Catholic and non-Catholic marriages.
- As per the Codes of Usages and Customs of Gentile Hindus, divorce in Hindus is permitted only on the condition of adultery by the wife.²⁴

While the Goa UCC is often seen as a progressive and gender-equal law, critics argue that there are still inconsistencies within the code itself. Some provisions favor certain communities or

²¹ Article 1057 - Secular nature of marriage

²²How uniform is Goa's civil code? | Explained/ article published by Indiantoday.in on 2nd of July 2023

²³ Article 1086 - Annulment of Catholic marriage

²⁴Ibid of 20

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

perpetuate discriminatory practices, which can undermine the goal of a truly uniform and equitable legal system.

EQUALITY, RELIGION, AND UNIFORMITY

India is a diverse nation with various customs and communities, housing many religions and cultures throughout its history. This diversity results in a complex legal landscape where Hindus, Muslims, Christians, Parsees, and others have different personal laws regarding marriage, adoption, guardianship, divorce, and succession. Even though these communities coexist as part of one country, family laws in India differ from one religion to another. The reasons for this disparity lie in the customs, social practices, and religious interpretations that shape the personal lives of these communities²⁵.

Examples of codified personal laws include acts like the Indian Christian Marriage Act of 1872, Cochin Christian Civil Marriage Act of 1920, Anand Marriage Act of 1909 for Sikhs, Muslim Personal Law (Shariat) Application Act of 1937, Parsi Marriage and Divorce Act of 1937, and the Hindu Marriage Act of 1955.

Conflicts arise between personal laws and Part III of the Indian Constitution, especially concerning Articles 14, 15, and 25. The Narasu Appa Mali Case²⁶ regarding the Bombay Prohibition of Bigamous Marriage Act 1946 sheds light on this dilemma. The court ruled that personal laws are not included in the "law" referred to in Article 13(3) and Article 372(3).

Approaches to codifying civil law vary among different religious communities. In the case of Muslims, who constitute the largest minority, opinions on a Uniform Civil Code (UCC) differ. Some advocate for eventually merging Muslim personal law into the Indian Civil Code through a UCC, supporting reforms within the existing framework.

Religious minorities like Christians, Parsis, and Jews haven't strongly voiced opinions on Article 44's mandate for a UCC, adopting a wait-and-watch approach. Among Hindus, there's a majority

²⁵ UNIFORM CIVIL CODE AND CONFLICTS OF PERSONAL LAWS -Riya puniyani

²⁶The State of Bombay vs Narasu Appa Mali on 24 July, 1951 AIR 1952 Bom 84, (1951)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

demand for quick UCC implementation, but some leaders openly oppose it, expressing a preference for retaining various religious personal laws.

IMPLEMENTATION OF UNIFORM CIVIL CODE

Some people strongly oppose the idea of a Uniform Civil Code (UCC) for several reasons. Firstly, they argue that having a UCC would go against the constitutional right to practice one's religion freely. Every religious group, as per Article 25, has the right to manage its own affairs, and Article 29 allows them to preserve their unique culture. This concern is shared by tribal groups like the Rashtriya Adivasi Ekta Parishad, who worry about protecting their customs from a potential UCC. In places like Nagaland, tribal customary laws take precedence over federal laws in personal matters.²⁷

Secondly, opponents say that if even criminal laws like the CrPC and IPC can differ between states, why should personal laws be uniform? For instance, states like West Bengal and Tamil Nadu have amended the Indian Evidence Act of 1872, a federal law. Additionally, different states have different legal ages for activities like drinking alcohol under criminal law.

Thirdly, critics question whether the framers of the constitution intended complete uniformity in personal laws. Personal laws were placed in the Concurrent List, giving both Parliament and State Assemblies the power to make laws on personal issues (Entry 5). If total uniformity was the goal, personal laws would have been in the union list, granting exclusive power to Parliament.

Finally, there's a concern that a UCC might enforce a Hindu-centric code on all communities. This means that provisions related to personal matters like marriage, aligned with Hindu customs, could become mandatory for all communities under a UCC, disregarding their unique practices.

The 21st Law Commission concluded in 2018 that a UCC is neither desirable nor feasible. The report states that while the diversity of Indian culture can and should be celebrated, specific groups or weaker sections of society must not be deprived in the process. Resolution of this conflict does not mean the abolition of differences. The Law

²⁷ Uniform Civil Code: What is it and What are the Arguments Against it? - article published by thequint.com
For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Commission report said the way forward may not be a Uniform Civil Code but the codification of all personal laws so that prejudices and stereotypes in every one of them would come to light and could be tested on the anvil of Fundamental Rights guaranteed by the Constitution.

In the letter sent to the member secretary of the 22nd law commission, Shiromani Akali Dal President Sukhbir Singh Badal said, "uniformity should not be confused with unity. India symbolizes unity in diversity and not in uniformity. Only a truly federal structure can resolve our problems and make India a global superpower."

He also states that if UCC implemented, it will definitely affect the freedom of minority communities of different caste, creed and religions.

In simple terms, opponents argue that a UCC could infringe on the freedom of religion, overlook state-level legal variations, question the original intent of the constitution makers, and risk imposing a predominantly Hindu code on everyone.

The following are the arguments presented by UCC proponents:

One of the most compelling arguments for the UCC is that it would promote gender equality. In matters such as marriage, divorce, and inheritance, personal laws in India frequently contain discriminatory provisions against women. Implementing a common civil code would assist in the eradication of these discriminatory practices and ensure that all citizens enjoy equal rights and opportunities. The implementation of a UCC, according to its proponents, would strengthen the Indian Constitution's secularism clause. They believe that personal laws based on religion are incompatible with the concept of a secular state and that a uniform code would ensure equality and justice for all citizens regardless of their religious heritage. A common civil code would facilitate legal uniformity and streamline the legal system. Currently, various religious communities adhere to their own sets of laws, resulting in confusion and complexity in personal matters. A uniform code would expedite the legal system and make it more accessible and comprehensible to all citizens.

OPTION TO CHOOSE

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

If individuals have the option to choose between the Uniform Civil Code (UCC) and their laws, there is a risk of law manipulation and abuse. Individuals can choose whether to observe the UCC or their laws based on their convenience and the desired outcomes in a given circumstance. This selective application may lead to the exploitation of legal vulnerabilities and the bending of the law to suit their interests.

Proponents of the "Option to Choose" model in the Uniform Civil Code (UCC) debate assert that it represents a balanced and flexible approach that respects individual freedom and preserves India's cultural and religious diversity. They argue that this model aligns personal laws with an individual's beliefs and practices, reducing state intervention in personal matters while minimizing the potential for legal disputes and conflicts. By allowing individuals to select between the UCC and their personal laws, it offers a practical solution that acknowledges the complexities of the Indian legal landscape, serving as a transitional phase towards achieving the broader goals of a UCC, while accommodating the existing diversity and respecting individual autonomy.

But permitting individuals to choose between the UCC and their laws can result in inconsistent legal interpretations. Individuals may interpret and apply the law differently, resulting in confusion and a lack of legal uniformity. Maintaining a system that allows individuals to choose between the UCC and their laws would complicate the legal framework. It may result in administrative complications, an increase in litigation, and delays in the resolution of legal disputes. Individual rights and the need for a unified legal system must be balanced. While it is necessary to accommodate certain cultural and religious practices, allowing too much freedom in selecting the law to be followed could undermine the purpose of a uniform civil code, which is to ensure justice and equality for all citizens.

CONCLUSION

Article 44 will certainly have an impact on Articles 25 and 14. However, it is ultimately the responsibility of the judiciary and the legislature to strike a balance between these provisions, taking into consideration India's diverse cultural, religious, and social fabric while upholding the Constitution's fundamental rights and principles.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Since the personal laws of each religion contain separate provisions, their unification will bring not only resentment but also enmity in the public towards one another; therefore, the Uniform Civil Code will need to bring in such laws that strike a balance between the protection of the fundamental rights and the religious principles of the different communities that exist in the country.

It is important to strike a balance between individual rights and the need for a uniform legal system. While accommodating certain cultural and religious practices is necessary, providing too much flexibility in choosing the law to be followed could undermine the purpose of a uniform civil code, which is to ensure equality and justice for all citizens.

References:

- The Constitution of India
- The Portuguese Civil Code, 1867
- The Code of Gentile Hindu Usages and Customs of Goa
- The 21st Law Commission of India Consultation Paper on Reforms of Family Law
- The Politics of Personal Laws in South Asia- Identity, Nationalism and Uniform Civil Code Book by Partha S. Ghosh
- Research papers
- News articles

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>