

**UNIFORM CIVIL CODE IN INDIA: IMPLICATIONS, RESISTANCE
AND THE WAY FORWARD**

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Abstract:

The debate surrounding India's UCC has been ongoing for many years. According to the UCC, a standardized legal framework that is more unified for all citizens should replace the diverse family laws. The argument lies on both sides, with some advocating for gender equality and national unity while others see it as interfering with religious customs and traditions. From a social standpoint, India's adoption of the Uniform Civil Code (UCC) faces opposition. We are examining the idea of the UCC, its legal framework, and genesis. Examining the UCC as it relates to personal laws, the paper delves into its advantages, disadvantages, and challenges.

Keywords: Uniform Civil Code, personal laws, religion, gender equality, national unity, social resistance.

Chapter1: Introduction

The Uniform Civil Code is an idealistic approach to bring uniformity among Indian citizens. The UCC aspires to take over the private laws of each separate religion by proposing a single legal framework. The UCC has encountered opposition over the years on its fundamental principles of national unity and gender equality. The state has been empowered by **Article 44 of the Indian Constitution** to create a Uniform Civil Code. However, strong opposition from numerous religious groups is dragging down the implementation of the UCC.

In India, no explicit law or statute defines the term UCC. The Indian Constitution, however, stipulates explicitly in Article 44 that "**The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.**"² Various religious groups' opposition to UCC, which they perceive as an assault on their cultural and religious identity, has made its implementation difficult.

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²ConstitutionofIndia,art.44

The UCC in India has the potential to promote gender equality and a feeling of national identity. Implementation must be done sensitively in recognition of India's rich cultural past and the importance of religious autonomy.³ The UCC should be implemented in stages, beginning with problems that receive widespread support. The controversy surrounding UCC has been an intriguing issue in India for a long time. While the Constitution was written, the supporters of a uniform civil code wanted to encourage national unification and equality for women during the 1950s. Many religious groups oppose the initiative because they see it as an attack on the fundamentals of their culture and religion.

The importance of the UCC lies in its ability to promote equality and secularism throughout India. Implementing a UCC would guarantee equal treatment under the law for all people, regardless of gender or religious beliefs. Additionally, the prejudice against women usually upheld by personal statutes might be eliminated with the backing of these legal reforms.

Chapter 2: UCC in India: A Historical Significance

The Indian Constitution's writers originally coined the term "Uniform Civil Code" (UCC) in the 1940s. They thought a unified civil code would encourage national integration and gender fairness. A single set of laws governing personal issues like marriage, divorce, inheritance, and adoption for all citizens, regardless of the irreligious affiliations, is the principle of a UCC.

Shah Bano Begum v. Union of India (1985)⁴ is a significant case in which UCC was recognized in India. Regardless of their law, the Supreme Court of India ruled in this case that Muslim women were entitled to maintenance under *Section 125 of the Code of Criminal Procedure*. Muslim organizations, who perceived this decision as a threat to their religious identity, widely protested it. The case raised awareness of the UCC issue. It emphasized the necessity of a standard set of laws that would apply to all citizens—the constitutionality of triple talaq, which Muslims in India practice, has been contested. The triple talaq practice was ruled unlawful by the Indian Supreme Court because it violates Muslim women's fundamental rights. This situation emphasizes the need for a unified civil code, the significance of gender

³LegalServiceIndia, "TheSignificanceoftheUniformCivilCodeinIndia:PromotingEqualityandUnity,"LegalServiceIndia(2021),

⁴ShahBanoBegumv.UnionofIndia,1985AIR945.

equality, and the necessity of safeguarding each citizen's fundamental rights.

1950s-1960s: During the initial years of India's independence, dialogues concerning the implementation of a Uniform Civil Code (UCC) unfolded. Various politicians and social reformers endorsed the notion. Nevertheless, the government encountered resistance from different religious factions, which prompted a more cautious approach.

1985: The Shah Bano case garnered national attention when the Supreme Court granted a divorced Muslim woman alimony under secular law. The ensuing controversy led to the enactment of the *Muslim Women (Protection of Rights on Divorce) Act*,⁵ exempting Muslims from the application of secular laws about divorce.

1995: In the *Sarla Mudgal case*⁶, the Supreme Court underscored the necessity of a UCC and called on the government to take the requisite steps.

2003: The National Commission to Review the Working of the Constitution advocated for implementing a UCC, emphasizing the imperative of gender justice and equality.

2014: The Bharatiya Janata Party (BJP) included the implementation of a UCC in its electoral manifesto, reigniting discussions and deliberations on the subject.

2015: The Law Commission of India distributed a questionnaire soliciting public viewpoints on adopting a UCC. This initiative evoked substantial responses from various segments of society.

2017: The Supreme Court deemed the practice of instantaneous triple talaq in Islam unconstitutional, reigniting calls for a UCC to rectify gender imbalances in personal laws.

The UCC has been a subject of debate throughout India's history. Britain established a significant start toward a unified civil code in 1840 by creating a uniform criminal justice system. In the 1950s, women's groups began to push for a UCC. The Supreme Court of India made a significant ruling regarding Mohd in 1985. Ahmed Khan and Shah Bano Begum highlighted this landmark case's need for a Uniform Commercial Code (UCC).

Other than that, other case laws discussed the essence of UCC example,

In *Sarla Mudgal v. Union of India (1995)*,⁷ the Supreme Court ruled that the Hindu Marriage Act's definition of bigamy included a Hindu husband who converted to Islam to wed a second wife without divorcing the first and that the UCC was essential to advancing both female

⁵Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).

⁶*Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

⁷A Uniform System of Citation, T2.18 India (Common Law), available at <https://www.legalbluebook.com/bluebook/v21/tables/t2-foreign-jurisdictions/t2-18-india> (last visited Aug 30, 2023).

equality and national unification.

In *John Vallamattom v. Union of India (2003)*, the Supreme Court ruled that the UCC was a directive principle of state policy rather than a constitutional imperative and that the government should take action to execute it.⁸

Debates associated with the Uniform Civil Code in the Indian context:

“UCC is required to advance gender justice and racial harmony.”

- *J.S.Verma* (A Former Chief Justice of India)

“The UCC is not required, and personal laws should be permitted to regulate areas of personal law.”

- *Hamid Ansari* (A Former Vice President of India)

To get the public's opinions on adopting a Uniform Civil Code (UCC), the Law Commission of India published a questionnaire in 2015. The questionnaire aimed to start a discussion about family law reforms that may be implemented in an integrated way without jeopardizing the diversity and plurality of India's social fabric. The initiative received a significant amount of feedback from various societal groups. Alternative Law Forum criticized the UCC for making assumptions regarding gender fairness and the realization of greater rights without a working draft. Additionally, the questionnaire included certain presumptions regarding several contemporary activities. In contrast to the assumption made regarding Hindu women's property rights, which believed that the law was perfect and that customary practices hindered women from asserting their rights, the law on this subject and how it was interpreted had issues.⁹

Protection of religious rights: Critics of the UCC contend that it would violate minority rights to exercise their religion and that, instead, private law ought to be permitted to control issues like inheritance, divorce, and marriage.

⁸T2.18India(CommonLaw),availableat <https://www.legalbluebook.com/bluebook/v21/tables/t2-foreign-jurisdictions/t2-18-india> (last visited Aug 30,2023).

⁹The Bluebook | A Uniform System of Citation, T2.18 India (Common Law), availableat<https://www.legalbluebook.com/bluebook/v21/tables/t2-foreign-jurisdictions/t2-18-india> (last visited Aug 30,2023).

Gender justice: Supporters of the UCC claim that guaranteeing equal rights for women in all religions will advance gender justice.

National integration: By establishing a uniform civil code for all people, the UCC is viewed as promoting national integration.

Political factors: The UCC is a contentious political topic, with many political parties implementing different views.

Chapter 3: Analyzing the Constitutional and Legal Framework of the Uniform Civil Code in India

Background:

India's Uniform Civil Code (UCC) has been the focus of controversy and discussion for many years. It is envisioned as a system of rules that apply equally to all people, regardless of their religious beliefs, and which regulate personal concerns like marriage, divorce, adoption, inheritance, and succession. With an emphasis on the clauses of *Article 44 of the Indian Constitution* and the Directive Principles of State Policy, this chapter study intends to analyze the constitutional and legal foundation of the UCC in India.

I. Constitutional Provisions:

1. Article 44 of the Constitution of India:

One of the *Directive Principles of State Policy, Article 44*, mandates that the State shall work to ensure citizens have access to a consistent civil code across India. This clause embodies the Constitution's founders' intention to advance gender equality and national integration by harmonizing personal laws among various religious groups.

However, Article 44 is a *non-justiciable directive principle*, which means that although it is a guiding concept for the State, it cannot be enforced by the courts.

II. Legal Framework:

1. Existing Personal Laws:

Currently, Hindu Law, Muslim Law, Christian Law, and other systems of personal laws based on religious ties are practiced in India. These personal laws, based on sacred texts, practices, and traditions, regulate various areas of private life, such as marriage, divorce,

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inheritance, and adoption.

Religious communities are treated differently and inconsistently by the state due to the existence of many personal laws.

2. Debates and Perspectives:

The controversy over the UCC in India is complicated and involves various parties, including numerous religious groups, jurists, and decision-makers.

Supporters contend that a UCC will advance equality, secularism, and gender justice by ensuring all citizens have the same rights and protections.

Critics express alarm over a possible violation of religious liberty and assert that personal laws should have the authority to control questions of personal faith and belief.

Chapter 4: Resistance to Uniform Civil Code in India

Background:

India has debated the Uniform Civil Code (UCC) for many years. Opponents highlight worries about the potential encroachment on religious freedom and the Preservation of cultural diversity, while supporters claim that it would advance equality and secularism. This chapter examines the UCC's opposition in India while outlining the counter arguments and how they affect the country's diversity.

1. Arguments against the Uniform Civil Code:

Secularism and Diversity: Critics contend that imposing a uniform law infringes upon religious freedom and diverse cultural practices, contradicting India's secular fabric.

Cultural Sensitivity: UCC might disregard minority community practices, leading to cultural erosion and social disorder.

Infringement on Personal Laws: Opponents, especially the Muslim community, fear UCC would violate their religious practices, like 'triple talaq' and 'nikah halala.'

Difficulty in Implementation: Given India's cultural diversity, crafting an acceptable UCC that respects all traditions and appeases various communities is challenging.

Government Interference: Skeptics question the government's right to reform personal laws and whether the UCC might undermine fundamental human rights.

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Minority Opposition: The All India Muslim Personal Law Board opposes UCC, asserting it disrupts social harmony and hampers religious practices.

2. India, Diversity, and UCC:

One of the key factors contributing to the difficulty of implementing UCC has been the diversity of the Indian community. People from different religions, castes, and nationalities can be found throughout India, and they all have distinctive cultural and religious rituals. Consider these groups' various demands and interests to implement rules uniformly applied to all individuals.

According to the Supreme Court of India's ruling in *John Vallamattom v. Union of India* (2003), "*the Constitution of India does not mandate the imposition of uniform civil code upon the citizens of the country.*" The Indian Constitution acknowledges variety and pluralism as being essential to Indian society.

Several incidents in recent years have brought to light the necessity of a UCC in India. For instance, the Supreme Court urged for the implementation of a UCC in 2017 and considered immediate triple talaq to be unlawful to promote gender justice and equality. A Christian Man's second marriage was found to be illegal under Indian law by the Kerala High Court in 2021 because he had not divorced his first wife by Christian personal law. The Court demanded the establishment of a UCC to deal with these problems.

India's population has a wide range of demands and interests, so implementing a uniform civil code in that country is a complicated subject that must be considered. While some judicial pronouncements have called for its implementation, others have recognized the importance of diversity and pluralism in Indian society. Recent incidents have highlighted the need for a UCC to promote gender justice and equality.

3. Perspectives of Famous Personalities:

Several well-known public figures and legal experts have spoken out in favor of India's adoption of the Uniform Civil Code (UCC). Among them are:

CS, the chairman of Bizsol India Services Pvt Ltd, Venkat R Venkitachalam:

In an article titled "India's Tryst With The Elusive Code That It Needs To Remain United," Venkitachalam backs the adoption of the UCC and claims that it will guarantee gender equality and prohibit discrimination based on religion and other issues.

Attorney Apurva Agarwal: According to Agarwal, the UCC is essential to advancing equality and secularism in India.

AIMPLB, the All India Muslim Personal Law Board: The AIMPLB opposed the UCC because it would infringe upon both the right to religious freedom and cultural diversity.

Former Chief Justice of India, J.S. Verma:

Verma stated that personal laws should be maintained in India and that the UCC is unnecessary.

Kiren Rijiju, Minister of Union Law: Rijiju said in front of the House of Representatives that there are no current preparations for establishing a panel to carry out the UCC.

a Quint: The Quint has reported on the objections to the UCC, including violating the freedom to practice one's religion following one's personal beliefs, which permits religious communities to adhere to local rules.

Several well-known people and legal experts have spoken out in favor of the UCC's application in India. While some people are in favor of the UCC, others claim that it would infringe on their right to cultural variety and religious freedom or personal laws should be allowed to continue.

Chapter 5: Resistance to Uniform Civil Code in India: Analyzing Challenges and Recommendations

Background:

This chapter analyzes the resistance to the UCC in India, discussing the arguments against it and its impact on India's diversity. It will also explore the challenges in the implementation of the UCC and discuss the role of the Law Commission of India in its implementation.

II. Analyzing the Challenges in the Implementation of the Uniform Civil Code:

Challenges in Implementing the Uniform Civil Code (UCC) in India:

1. Differences between the Beliefs, Practices, and Customs of Different Religious Groups: The main obstacle to putting the UCC into effect is the diversity of religious organizations' practices, traditions, and beliefs. In India, personal laws are based on religious convictions; any attempt to replace them with a single set of rules will encounter opposition from many religious sects. The argument behind this objection is that the UCC would go against both cultural variety and the freedom of religion.
2. Lack of knowledge and instruction: Many people in India must know their legal responsibilities and rights under common or personal law. They are ignorant of the UCC's consequences and how their personal lives would be impacted by it. This challenge is based on the theory that the UCC would require a massive awareness and education campaign to ensure people understand its implications.
3. Practical Challenges: Giving states the authority to implement a UCC may lead to various practical problems. What happens, for instance, if Gujarat has a UCC and two married individuals relocate to Rajasthan? Which statute will they abide by? The idea behind this challenge is that the UCC would produce real-world problems that would be challenging to tackle.

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4. Religious Groups' Resistance: Religious organizations in India have resisted the UCC's implementation, claiming that doing so would violate their right to religious freedom and commitment to cultural diversity. This challenge is predicated on the idea that many religious communities would oppose the UCC.
5. Political Will: Implementing the UCC requires political will and consensus among political parties. However, political parties in India have been divided on the issue of the UCC, with some supporting it and others opposing it. This challenge is based on the theory that the UCC would require a strong political will to implement.

Recent Case Law Related to UCC in India:

There have been several recent cases in India that have discussed the issue of the Uniform Civil Code (UCC).

1. The Supreme Court of India ruled in *Mohd. Ahmed Khan v. Shah Bano Begum (1985)*, Muslim women had a right to maintenance under Section 125 of the Code of Criminal Procedure, regardless of their law. Muslim organizations, who saw this decision as a threat to their religious identity, widely protested it.
2. The Supreme Court ruled in *Sarla Mudgal v. Union of India (1995)* that a Hindu husband's conversion to Islam did not annul his marriage under Hindu law. A UCC was mandated by the Court to advance gender equality and justice.
3. In the 2017 case *Shayara Bano v. Union of India*, the Supreme Court ruled that immediate triple talaq was unconstitutional and urged the adoption of a UCC to advance gender justice and equality.
4. In the case of *Joseph Shine v. Union of India (2018)*, the Supreme Court invalidated *Section 497 of the Indian Penal Code*, which made adultery a crime, because it went against people's rights to equality and dignity. A UCC was mandated by the Court to address concerns of gender equality and justice.

These cases highlight the need for a UCC in India to promote gender justice and equality. However, implementing a UCC has been challenging due to opposition from various religious groups who view it as an attack on their cultural and religious identity.

IV. Recommendations for the Implementation of Uniform Civil Code:

There has been discussion about adopting a Uniform Civil Code (UCC) in India for many years. Others have acknowledged the significance of variety and pluralism in Indian society, while other judicial rulings have advocated for its implementation to support national integration and gender justice.

In the future, the government might think about gradually integrating UCC, starting with areas like marriage and divorce laws where there is already some degree of uniformity. To address these concerns and ensure that the UCC is implemented in a way that considers their requirements, the government might also confer with diverse stakeholders like religious leaders, legal experts, and civil society organizations. Additionally, public education campaigns regarding the advantages of UCC and how it will advance equality and secularism in India might be initiated.

It is crucial to remember that implementing a UCC in India requires considering the population's different requirements and interests. Others may consider it an essential step towards achieving gender justice and equality, while some groups may perceive it as an attack on their cultural and religious identity. As a result, all actions taken to adopt UCC must be sensitive and careful.

Conclusion & Suggestions:

The UCC's implementation in India is a complicated process that calls for careful consideration of the fears and suggestions of various stakeholders. The UCC may encourage equality and secularism, but it also runs the risk of eradicating cultural diversity and marginalizing minority communities. Studying the viability of implementing the UCC and

Ensuring that it is implemented in a way that respects the cultural diversity and traditions of many communities is a crucial role that the Law Commission of India must play.

In India, there is widespread opposition to the UCC, which is diverse and encompasses a range of parties, including legislators, legal professionals, and religious groups.

While supporters of a UCC claim that it would advance equality and secularism, detractors express worries about potential restrictions on religious liberty and the preservation of cultural diversity. Striking a balance between encouraging national cohesion and conserving India's cultural uniqueness is crucial to defending everyone's fundamental rights.

The Uniform Civil Code's constitutional and legal foundation in India is complicated and divisive. Although a universal civil code is envisioned in Article 44 of the Constitution, its implementation is still debatable. Concerns concerning equity and justice have been raised due to the discrepancies and contradictions caused by the current personal laws depending on religious affiliations.

The opinions of other parties, including legal professionals and religious authorities, add to the ongoing discussions surrounding the UCC. When weighing the pros and cons of introducing a UCC in India, it is critical to balance advancing uniformity and upholding religious freedom.

The Uniform Civil Code proposes replacing the various religious personal laws with one set of rules that apply to all Indian people. The UCC has the potential to advance gender equality and racial harmony. Still, its implementation must be done to respect the variety of Indian cultural traditions and the right to religious freedom.

Religious organizations that worry that the UCC may conflict with their laws are the main force behind the social opposition to the UCC. The government should discuss this with religious groups to address these concerns and ensure that the UCC is implemented in a fashion that is acceptable to all citizens. The literature analysis on several research papers analyzing the implications of UCC in India and current case laws offers insights into the prospects and problems of putting the UCC into practice. Striking a balance between the requirement for a uniform civil code and the need to respect the diversity of Indian culture and the right to freedom of religion is the best course of action.

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