
UNIFORM CIVIL CODE NEEDS IN TODAY'S ERA

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ABSTRACT

This article provides an overview of the Uniform Civil Code (UCC) in India, discussing its historical development, legal and constitutional provisions, and the legal challenges and implications related to its implementation. The need for the UCC is also explained by its role in ensuring equality before the law, promoting gender justice, and removing complex personal laws within the country. How to implement the UCC in today's era, including creating awareness, stakeholder engagement, judicial interpretation, and considering public opinion, are evaluated. A comparative study of UCC-related legal frameworks in other countries, such as France, Turkey, and Israel, is also there. This article also talks about the need for equality and justice in which I have discussed the need for a uniform civil code to ensure equality before the law in which I have covered points such as gender justice, secularism, non-discrimination, etc. After that, I evaluated the strategies for implementing a UCC in today's era in which I talked about how to create awareness in the general public, judicial interpretation, and public opinion. The article concludes by highlighting the potential benefits of UCC implementation, including the protection of individual rights, promotion of secularism, and establishment of a uniform legal system for all citizens.

Keywords: UCC, Equality, Pluralism, Justice, Secularism

I. Introduction

A. Background and importance of the Uniform Civil Code (UCC)

"We want to make it clear that a uniform civil code does not mean that there will be one law for the whole of India. Uniform civil code means one law for every person in India, irrespective of the religion to which he belongs." (Speech in the Constituent Assembly, November 29, 1948)

– By Dr. B.R. Ambedkar

First of all, moving toward the history of the Uniform Civil Code let's talk about what is UCC (Uniform Civil Code). The Uniform Civil Code, also known as the UCC is written in golden letters in Article 44 of the Constitution of India which comes under DPSP (Directive Principles of State Policy) from Articles (36 -51).

This law is proposed by Dr Babasaheb Ambedkar who is a chairman of the Drafting Committee of the Indian Constitution supported by eminent nationalists like Gopal Swamy Iyenger, Anantasayam Iyengar, KM Munshiji, Alladi Krishnaswamy Iyer and others as per their thought to create and execute only one personal law which governs the entire people of the Nation irrespective of their gender, cast, creed, sex, and religion. But currently, the personal laws of different religions and communities are also different as they are being regulated with their personal laws.¹

The British government in colonial India wanted to codify the Indian law with regard to crimes, evidence, contracts, and personal laws of all religions but specifically suggested that to rule in India you must not flout the personal laws of all the religions, and hence the ideas of UCC is first emerged from here.

There are various concerns emerged to codify Hindu law so to address these concerns B N Rau Committee was created in 1941. And after this several Hindu laws are passed such as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act². But UCC was not passed. We can only see a live example of the implementation of UCC which is in Goa and Uttarakhand and it is running in

¹ Hazarika, Raya, Should India Have a Uniform Civil Code? (October 25, 2010). Available at SSRN: <https://ssrn.com/abstract=1697580> or <http://dx.doi.org/10.2139/ssrn.1697580> (Accessed: 22 Sep. 23).

² John A. Banningan, The Hindu Code Bill, Institute of Pacific Relations, Vol. 21, No. 17 (Dec. 3, 1952), pp. 173-176.

the state without any disputes³. Supreme Court always states that the government has to learn from Goa.

The uniform civil code will play a crucial role in matters of marriage, adoption, succession, and divorce. It will simplify the complicated personal laws of marriage ceremonies, inheritance, succession, and adoption of different religions and make one law for all. After that, the same civil law will apply to all citizens irrespective of their religion. There is so much importance of UCC in the present era, even the supreme court said in *Smt. Sarla Mudgal vs Union of India & Others*⁴ that the government not taking any steps and also not focusing on implementing UCC in the whole nation. It is very much necessary because in the past there is no such needs arise as there is also a threat to the nation after independence if UCC were implemented then there should be a chance of riots happening between different religions but in the present era the chance is very low and now we can use the social media for inspiring the peoples, motivating the people for giving opinion and gives a piece of knowledge about it so that government can even take action for implementing it.

B. The main objective of the paper

My main objective in writing this paper is to aware people of why there should be the use of UCC in the present era and what difficulties are coming in front of implementing it. And there is a question also arises that is the government have any plan for implementing UCC or the nation be divided from UCC? What is the profit of it and Why UCC should not be implemented? So, in this article, I am giving all the answers to the questions that arise.

II. Evolution and Context of UCC

A. Historical development of the concept of a Uniform Civil Code⁵

During the colonial period (1757-1947) when the Britishers had a colonial rule in India, they were also trying to reform the personal laws of Hindus, Muslims, Christians, etc. but they were only able to introduce certain Hindu Acts such as Hindu Widow Remarriage Act (1856), the Special Marriage Act (1872), etc because they found it very difficult to make laws on diverse

³ Aswathi V. Krishna, Universalism, and Cultural Relativism in The Context of The Uniform Civil Code In India, Journal of Legal Research and Juridical Sciences, VOL. 2 ISSUE 4.

⁴ Sarla Mudgal v. Union of India, (1995) 3 SCC 635

⁵ M.S. Ratnaparkhi, Uniform civil code An Ignored constitutional Imperative, Google Books. Available at: <https://books.google.co.in/books?id=6NCQQn0ixZUC&pg=PA1&ots=qzpKPvMxEc&dq=historical+of+Uniform+civil+code&lr&pg=PA9#v=onepage&q=historical%20of%20Uniform%20civil%20code&f=false> (Accessed: 29 September 2023).

customs and traditions under a single uniform code due to the complex nature of religious and social practices and also due to political sensitivities because the Britishers have to maintain a delicate balance between different religious communities and if they introduce the UCC then there should be a great chance of conflict between religious groups and by this Britishers will have to wash their hands from India.

During Pre- Independence Era (1757-1947) demand for UCC is raised by leaders and social reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Dr. B.R. Ambedkar, etc for the codification of the personal laws in India in the constituent assembly of 1948. But as we know only Hindu personal laws are penalized.

During the Post-Independence era (1947- till now) the debate on UCC continued in subsequent years, with discussions around its implementations, necessity, and implications. Various legal and social reforms took place in respect of personal laws across different religious communities.

And in the *21st century*, the BJP government is talking about implementations of UCC in India. But in today's era, there are religion and communities of Upper-class Muslims and some Hindus who is creating a nuisance in the implementation of UCC. However, a majority of the population is in favor of the BJP government's decisions for the implementation of UCC. And it is very much chance of implementation of UCC before the P.M. election of 2024.

B. Examination of the legal and constitutional provisions relevant to UCC

- Article 44⁶ – According to part IV of the constitution of India ***“The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”***. It states that the state has to work on the implementation or constitutional mandate of the UCC throughout the Nation.
- Directive Principles of State Policy – DPSP provides guidelines and direction to the government for establishing an ideal society, social justice, equality, and non-discrimination relevant to the UCC. DPSP is not enforceable in courts, as it guides the legislature of the union and state. The DPSP relevant to the Uniform Civil Code (UCC) includes:

⁶ INDIA CONST. art. 44.

- i. Article 38⁷: It directs the State to secure a social order for the promotion of the welfare of the people and it highlights the importance of minimizing inequalities and ensuring justice in all spheres.
 - ii. Article 39⁸: Article 39 includes provisions that call for the State to direct its policy towards securing equal justice and to ensure that the operation of the economic system does not result in the concentration of wealth and means of production in a few hands. These principles can be seen as supporting the need for a UCC that promotes social justice and equality.
 - iii. Article 44: Uniform civil code for the citizens The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.
- Fundamental Rights – The constitution offers basic fundamental rights to its all citizens under Part III, such as the right to equality (Article 14), the right to freedom of religion (Article 25), and the right to non-discrimination (Article 15), have a bearing on the UCC. These rights ensure individual freedoms and equality before the law.
 - Personal Laws – Personal laws are different concerning their religious communities and these are also relevant to the examination of the UCC. It governed matters such as marriage, divorce, maintenance, succession, inheritance, and adoption. Indian Constitution gives the right to religious communities to manage their affairs about personal laws (Article 25 and Article 26).
 - Judicial Interpretations⁹ – The Supreme Court of India has played an important role in interpreting and deciding matters related to personal laws and the UCC. The Supreme Court has always indicated and guided the government to implement UCC. As there are various cases in which the Supreme Court has stated the government to implement UCC and such cases are –
 - a. Shah Bano Case¹⁰: The Shah Bano case, in 1985, was a landmark legal battle in India that centered around the issue of maintenance for Muslim women after divorce. Shah Bano, a 62-year-old woman, was divorced by her husband and

⁷ INDIA CONST. art. 38.

⁸ INDIA CONST. art. 39.

⁹ Sheetal Kumrawat, Should India have a Uniform civil code, IJARIIT, Vol. 4 Issue 4, 430.

¹⁰ Mohd. Ahmed Khan V. Shah Bano Begum AIR 1985 SC 945

sought maintenance under Section 125 of the Criminal Procedure Code, which provides for the financial support of neglected wives.

The Supreme Court of India, in its initial judgment, ruled in favor of Shah Bano, stating that she was entitled to receive maintenance from her ex-husband. This decision was based on the principle of gender justice and equality enshrined in the Indian Constitution.

However, the judgment sparked controversy and drew criticism from conservative Muslim groups who argued that it infringed upon their religious rights, as the ruling was seen to challenge the Muslim Personal Law, which governed matters of marriage, divorce, and inheritance for Muslims in India.

In response to the outcry, the Indian government passed the Muslim Women (Protection of Rights on Divorce) Act in 1986. This act sought to uphold the traditional Muslim law, effectively overturning the Supreme Court's decision and limiting the maintenance granted to divorced Muslim women.

The Shah Bano case highlighted the complex and sensitive intersection of personal laws, religious rights, and gender justice in India. It brought to the forefront the ongoing debate over the need for a Uniform Civil Code (UCC) in India, which would provide a common set of laws governing personal matters for all citizens, irrespective of their religion. The case remains a significant reference point in discussions surrounding the UCC.

- b. Sarla Mudgal Case¹¹: The Sarla Mudgal case, a landmark legal decision in 1995, dealt with issues surrounding the practice of bigamy and conversion to Islam for the purpose of contracting a second marriage. Sarla Mudgal, the petitioner, argued that her husband had converted to Islam and married another woman, thus committing bigamy under Hindu law.

The Supreme Court of India, in its judgment, held that a Hindu husband who embraces Islam solely for the purpose of contracting a second marriage without legally dissolving the first marriage is still considered a Hindu, and the second marriage is void under the Hindu Marriage Act, 1955. The Court emphasized that

¹¹ Sarla Mudgal v. Union of India, (1995) 3 SCC 635

conversion to another religion for the sole purpose of evading monogamy laws is unacceptable.

Furthermore, the court clarified that a mere declaration of conversion does not dissolve the existing marriage under Hindu law, and the person remains bound by the first marriage. The judgment underscored the importance of the principle of monogamy in personal laws and highlighted the need for a Uniform Civil Code (UCC) in India to address such conflicts arising from diverse personal laws.

The Sarla Mudgal case played a pivotal role in advocating for the implementation of a Uniform Civil Code, which would provide a common set of laws governing personal matters such as marriage, divorce, and inheritance, irrespective of one's religious affiliation.

- c. John Vallamattom Case¹²: The case involved the rights of Christian priests and nuns to inherit property.
- d. Joseph Shine Case (2018)¹³: The Joseph Shine Case, decided in 2018, pertained to the constitutionality of Section 497 of the Indian Penal Code (IPC) which criminalized adultery. Joseph Shine challenged this section on the grounds that it violated the fundamental rights guaranteed under the Constitution of India, particularly the right to equality and the right to privacy. The Supreme Court of India, in a landmark judgment, held that Section 497 was unconstitutional as it treated women as the property of their husbands and violated their autonomy. The Court asserted that adultery could be a ground for divorce, but it should not be a criminal offense. This decision marked a significant step towards gender equality and the recognition of individual autonomy within marriage. It also aligned with the principles enshrined in the Uniform Civil Code (UCC), which seeks to establish a common set of laws for all citizens irrespective of their religion or personal beliefs.
- e. Shayara Bano Cases (2017)¹⁴: *Shayara Bano vs. Union of India* (2017) is a landmark case in the context of the Uniform Civil Code (UCC). *Shayara Bano*, a

¹² John Vallamattom V. UOI AIR 2003 SC 2902

¹³ Joseph Shine V. UOI AIR 2018 SC 4898

¹⁴ Shayara Bano V. UOI AIR 2017 9 SCC 1 (SC)

Muslim woman, challenged the practice of triple talaq, which allowed a Muslim man to divorce his wife by uttering "talaq" thrice. The Supreme Court of India, in a historic judgment, declared triple talaq unconstitutional and violative of Muslim women's fundamental rights.

The court held that the practice was arbitrary and not an essential religious practice under Islam. It also emphasized the need for a Uniform Civil Code to ensure gender justice and equality before the law. The judgment was hailed for its progressive stance on gender rights within personal laws.

Shayara Bano's case played a pivotal role in advocating for the codification of personal laws in India and paved the way for discussions on the implementation of a Uniform Civil Code, which would ensure uniformity in civil laws across all religious communities

III. Legal Challenges and Implications

A. Identification and examination of legal challenges in implementing a UCC¹⁵

There are several challenges in implementing UCC in diverse countries like India, which already has several laws running simultaneously. These problems can be addressed by making a balance between personal laws, religious freedom, and constitutional provisions. Now let us identify and examine some of the legal challenges in implementing a UCC.

- Constitutional Validity – The constitution is not written with biasedness so while implementing UCC government has to ensure that the provisions of articles including the right to freedom of religion (Article 25) and the right to cultural and educational rights of minorities (Articles 29 and 30) should not be infringed while promoting uniformity.
- Community-Specific Personal Laws – In India, there are various types of religious communities and each has its governing laws i.e., personal laws. So while the implementation of UCC various communities thought and perceive that it might be a threat to their traditions, religions, and culture. Let us take an example many communities have their traditions and culture in marriage but many communities

¹⁵ Dr. Bhagyashree A. Deshpande, Need and Importance of Implementation of UCC in India, Vol- 10 Issue-5, Junikhyat Journal, 84, 5 May 2020.

thought that while implementing UCC the culture and traditions get the change they were wrong because the formation or function of marriage will not change only the punishment and the way of procedure is change.

- Gender Equality and Reform¹⁶ – There are various communities in which their laws discriminate against women in matters related to marriage, divorce, inheritance, and property rights. And while implementation of UCC these personal laws are not enforced and UCC ensures equal rights for women irrespective of their religions.
- Political Consensus and Legislative Process – For the implementation of UCC requires political consult among various political parties. Developing a consult on the content, scope, and implementation of the UCC can be a challenging task, as different political groups may have varying interests and concerns.
- Balancing Uniformity and Diversity – India is a country where diverse nature of religions and cultural communities exists and they have their laws that evolved over thousands of years. So, while implementing UCC there should be a balance between making certain civil laws and religious practices.
- Judicial Interpretation – For answering the substantial question of law the judiciary plays an important role in interpreting certain laws. And it is important for the implementation of UCC there should be judicial precedents that align UCC with religious and cultural diversity. For the effective implementation of a UCC, the judicial interpretation should be uniform across different regions and contexts.

B. Comparative study of UCC-related legal frameworks in other countries or regions

1. France:

France is also well-known for its civil codes in the world which were introduced by Napoleon in 1804 at that time it is known as Napoleon Civil Code. The French civil code provides a uniform legal framework that doesn't recognize any religious personal laws relating to marriage, divorce, and inheritance and applies to all citizens, regardless of their religious, cultural, and tradition.

¹⁶ Aswathi V. Krishna, *Universalism, and Cultural Relativism in The Context of The Uniform Civil Code In India*, JLRJS, VOL. 2 ISSUE 4.

2. Turkey¹⁷:

Turkey adopted a Civil Code in 1986 that replaced religiously-based laws with a secular legal framework. It aimed to modernize the legal system and establish equality between men and women in inheritance and testimony.

The Turkish Civil Code is applied uniformly to all citizens, and religious laws do not govern personal matters such as marriage, divorce, and inheritance.

3. Israel:

Israel does not have a wide-ranging implemented UCC, but it has some elements of legal uniformity. Civil matters, such as marriage and divorce, fall under the jurisdiction of religious courts, each governed by its religious laws (Jewish, Muslim, Christian, etc.).

VI. Need for Equality and Justice

A. Discussion on the need for a uniform civil code to ensure equality before the law¹⁸

1. Equality and Non-Discrimination – A UCC means a Uniform set of laws that apply to all citizens irrespective of their religious, traditional, and cultural background. UCC aims to eliminate discriminatory practices and ensure equal rights to all citizens, regardless of their laws.
2. Secularism – To maintain secularism in the country then there is a need for implementing UCC in the country. And if we need to maintain secularism in an entire country then the government has to remove the personal laws of all religious community and the state have to avoid favouring any particular religious group.
3. Gender Justice – If UCC is implemented then gender inequalities and discriminatory practices that exist within personal laws will remove and it also promotes gender justice and ensure equal fundamental rights for women in areas such as marriage, divorce, and inheritance.
4. Simplification and Clarity – As we know many countries have complex and

¹⁷ Seda İrem Çakırca, Turkish Civil Code and CEDAW: Never Shall the Twain Meet?, *Droit Privé*, Vol. 45 Issue 62.

¹⁸ Uniform civil code (UCC): Positive response towards equality and progress (2023) Times of India Blog. Available at: <https://timesofindia.indiatimes.com/readersblog/mywriteexpress/uniform-civil-code-ucc-positive-response-towards-equality-and-progress-56242/> (Accessed: 14 July 2023).

contradictory personal laws. And if we implement UCC then it can simplify the complex and contradictory personal laws into understandable and establishes a better justice system.

V. Strategies and Way Forward

A. Evaluation of strategies for implementing a UCC in today's era

- Creating awareness among the general public – It is one of the major challenges for implementing UCC and there is also a lack of awareness among the general public about its benefit. Various religious communities thought that it is a threat to their religious, and traditional culture. To remove a threat, we have to create awareness among the general public and communities about the benefit and objectives of a UCC and also tell them how it can promote equality and justice and remove all misconceptions. And it can be done through various media platforms, educational institutions, campaigns, public debate, through small dialogue, and religious leaders.
- Judicial Interpretation – It can also be done through judicial interpretation because the judiciary interprets it in a fair and non-biasedness manner. As we know the judiciary is well-equipped to uphold constitutional provisions.
- Stakeholder Engagement – It includes religious and community leaders, legal experts, women's rights, and marginal groups. And these leaders and groups have strong roots in society and their voices are heard by the people so that's why concerns are taken from these stakeholders into the implementation of the UCC.
- Public Opinion – It is essential for considering public opinion because UCC affects individuals directly. It can be changed by cultural, religious, and social factors. Public Opinion can be taken on UCC through surveys, and public debates. In India, there are divided and diverse groups and each group has different perspectives on UCC. There is no such type of big survey or study that states a full range of opinions on UCC in India. Here are some sources which I have viewed and it can give some insight into the views of various stakeholders, and legal experts:

The 22nd law commission of India¹⁹ on 14 June 2023 try to find out the viewpoint and

¹⁹ Law commission of India & solicits views & ideas of the public and recognized religious organizations about & uniform civil code (no date) Press Information Bureau. Available at:

opinion of the public and religious communities on the UCC and for this, a public notice has been issued, and within 30 days the views should be given. As this is an opportunity for anyone to share their views and opinion with the commission.

21st law commission of India²⁰ in 2018 also released a consultant paper on the UCC in which it was argued that a UCC is neither necessary nor desirable at this time and suggested amending the personal laws of every religion and codifying those laws.

- Political Will – Political leader plays an important role in considering a matter related to the UCC because political will is affected by public opinion, judicial interventions, social movements, media coverage, and international developments. For example, in 2016 the supreme court had asked the government for the implementation of the UCC and had suggested that it should be taken through consultation with various stakeholders on the issue. In 2019, the government passed a law to criminalize triple talaq, which was seen as a step towards a UCC by some observers. Political will on UCC in India is a controversial issue because different political leaders have different views on it. Here are some viewpoints of political parties: -

BJP is the ruling party in India and as we know they are the supporter of UCC and always raises this issue in all election manifestos. BJP argues that there is a need for the UCC in the country to promote gender equality, national integration, and a uniform civil law for all citizens. As BJP stated that it would end the discrimination which is faced by Muslim women under Muslim personal laws.²¹

Congress the opposition party has always stood before the UCC for not implementing it because it violates the freedom of religion and rights of minorities of the country. And also point out that the 21st law commission of India had suggested reforming the existing personal laws.

Other regional parties such as the Shiv Sena (UBT), the Aam Aadmi Party (AAP), and

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1932397#:~:text=Law%20Commission%20of%20India%20solicits,organizations%20about%20Uniform%20Civil%20Code&text=The%2022nd%20Law%20Commission%20of,the%20Ministry%20of%20Law%20%26%20Justice>. (Accessed: 14 July 2023).

²⁰ Mishra, I. (2023) Law commission seeks fresh suggestions on Uniform Civil Code, The Hindu. Available at: <https://www.thehindu.com/news/national/law-commission-seeks-fresh-suggestions-on-uniform-civil-code/article66969329.ece> (Accessed: 14 July 2023).

²¹ Abhinav Mehrotra, Uniform Civil Code in India: An Overview, ORF, Jan 06, 2022.

the YSR Congress Party (YSRCP) also have expressed their viewpoint on the UCC and support it but parties such as the Samajwadi Party (SP), the Rashtriya Janata Dal (RJD), the Trinamool Congress (TMC), and the Left parties, have opposed it. Some parties such as the Janata Dal (United) (JD(U)), the Bahujan Samaj Party (BSP), and the Nationalist Congress Party (NCP) do not react or are unsure about the implementation of the UCC.

B. Discussion on potential benefits, of UCC implementation ²²

It provides equal status to all its citizens, promotes gender equality, promotes secularism, removes all the existing personal laws of all religions, and establishes only one civil law.

It will protect from discrimination based on religion, race, caste, creed, sex, and gender discrimination based on matters related to marriage, divorce, inheritance, adoption, succession, guardianship, etc because these are male-dominated.

VI. Conclusion

The implementation of a Uniform Civil Code (UCC) in India has been a topic of debate and discussion for many years. While there are challenges associated with its implementation, such as political will, cultural diversity, etc. The need for a UCC to ensure equality, justice, and gender rights cannot be infringed by removing discriminatory practices and amending complex personal laws into simple ones prevalent in the country. Strategies such as creating awareness, stakeholder engagement, judicial interpretation, and considering public opinion can pave the way for successful implementation. Overall, the implementation of a UCC in India can contribute to a more just and inclusive society.

²² Dr. Bhagyashree A. Deshpande, Need and Importance of Implementation of UCC in India, Vol- 10 Issue-5, Junikhyat Journal, 84, 5 May 2020.