
UNIFORM CIVIL CODE (UCC) & THE CONCEPT OF FEDERALISM: A COMPARATIVE STUDY

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The concept of UCC and Federalism has its individual features and aspects. This paper tries to understand and convey if both concepts can co-exist. This entirely focuses on academic understanding.

CHAPTER-1

INTRODUCTION:

This research paper is basic, descriptive, exploratory, and correlational based work in APA style on Uniform Civil Code (UCC) & the Concept of Federalism: A Comparative Study.

The question that comes to my mind that has encouraged me to write on this subject-matter is to understand:

- **How does UCC hinder the federal structure of India?**
- **Whether UCC is a boon or bane in accordance with federalism?**
- **Can UCC really prevail the idea and concept of equality?**

The division of law is as criminal law and civil law. The law dealing with acts or omissions that are conducted against state is known as criminal law where as laws dealing with property, family, contract, etc. and are usually against the individual or corporation is known as the civil law. The civil idea to follow the rules and law by everyone in a uniform or in same manner within the states territory or boundary or jurisdiction is known as uniform civil code.

Uniform Civil Code which is stated under Article 44 of the Indian Constitution as Directive Principles of the State Policy (DPSP). It is the duty of every state to secure uniform civil code throughout the country. Its main aim is to implement the concept of "One nation, One Law." It has been a very controversial and burning topic of discussion since 1985. The historic hierarchy in India for the same traced from the colonial period in 1835.

The system where the power is distributed or shared between the central and regional or we can also say as power shared between the national and state or provincial form of government

is known as federalism. It can also be described as when the authority is not conferred to single body but rather divided between two bodies is the federal system. India is a quasi-federal country as the governance system established carries the features of both i.e. the unitary and federal system.

LITERATURE REVIEW:

1. **TITLE:** Constituent Assembly Debate on Uniform Civil Code¹

NAME OF THE PUBLISHER/NAME OF THE JOURNAL: Byjus

ABOUT:

Without a doubt, the Indian Constitution gives the Parliament the authority to create a Uniform Civil Code. The call for changes to Muslim personal laws and the Uniform Civil Code grew stronger after the Hindu Code was passed. All laws, including personal laws, are subject to amendment under the constitution. Parliament and the legislature have jurisdiction over personal laws. Regarding the issue of personal law recognition, the Constitution recognizes the existence and continuation of personal laws under Article 372 and Entry 5 List III of the Seventh Schedule².

2. **TITLE:** Uniform Civil Code: The History and the Present³

AUTHOR: Sughosh Joshi

MONTH AND YEAR OF PUBLICATION: 13 February 2024

NAME OF THE PUBLISHER/NAME OF THE JOURNAL: Law and other things

ABOUT:

Describe what a Uniform Civil Code (“UCC”) is, go into detail about the background of the matter (the Constituent Assembly debates), and then emphasize the key elements of Uttarakhand’s UCC and its drawbacks while recommending more readings⁴.

3. **TITLE:** Federalism⁵

AUTHOR: The Editors of Britannica

¹ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

² <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

³ <https://lawandotherthings.com/uniform-civil-code-the-history-and-the-present/>

⁴ <https://lawandotherthings.com/uniform-civil-code-the-history-and-the-present/>

⁵ <https://www.britannica.com/topic/federalism>

MONTH AND YEAR OF PUBLICATION: Oct 23, 2024

NAME OF THE PUBLISHER/NAME OF THE JOURNAL: Britannica

ABOUT:

Federalism is a form of political structure that combines various states or polities into a single political system while preserving the autonomy of each. Federal systems do this by mandating that fundamental policies be negotiated and put into effect in some way, allowing all participants to participate in decision-making and execution. The political tenets that drive federal systems place a strong emphasis on the importance of negotiating and coordinating among several power centers; they highlight the benefits of having scattered power centers as a way to protect local and individual liberty.

There are numerous differences among the different political systems that identify as federal. However, there are several traits and ideas that all really federal systems share⁶.

4. **TITLE:** Changing Dimension of Federalism in India – The New Challenges⁷

AUTHOR: Megha Prasad

MONTH AND YEAR OF PUBLICATION: September 2, 2024

NAME OF THE PUBLISHER/NAME OF THE JOURNAL: Lawctopus

ABOUT:

India's federalism has changed significantly over the years. At first, there were fewer disputes between the federal government and the states when the same party held both center and state power. However, the mechanics of federalism changed as coalition governments came into power.

These days, local organizations like municipalities and panchayats work together with state governments to improve society. Cooperation between the states and the central is not always easy, though⁸.

5. **TITLE:** Uniform Civil Code (UCC): Meaning, Constitutional Provisions, Debates, Judgments & More⁹

⁶ <https://www.britannica.com/topic/federalism>

⁷ <https://www.lawctopus.com/academike/changing-dimension-of-federalism-in-india-the-new-challenges/>

⁸ <https://www.lawctopus.com/academike/changing-dimension-of-federalism-in-india-the-new-challenges/>

⁹ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

AUTHOR: Nextias Team

MONTH AND YEAR OF PUBLICATION: February 12th, 2024

NAME OF THE PUBLISHER/NAME OF THE JOURNAL: Nextias

ABOUT:

In India, the Uniform Civil Code (UCC), which is based on the ideals of equality, justice, and secularism, has long been a goal. The discussions around it have been rekindled by recent events, such as Uttarakhand's adoption of the Uniform Civil Code (UCC) Bill.

India's path to social justice, equality, and secularism depends heavily on the Uniform Civil Code (UCC). Notwithstanding many disadvantages and implementation difficulties, UCC has enormous potential advantages. The UCC promises to safeguard the downtrodden while advancing national unity and solidarity, from promoting modernization and simplifying legal processes to guaranteeing gender equality and social unity¹⁰.

CHAPTER-2

THE HISTORIC BACKGROUND OF UCC & FEDERALISM:

ABOUT UCC:

Before independence, it begins from 1835 when the British rulers identified the need to codify the Indian laws in a uniform manner suggesting the Hindu personal law and Muslim personal law separately. Later in the year, October 1840, Lex Loci Report emphasized the need and necessity of uniformity in the codification of Indian law relating to crimes, evidence, and contract. However, it also suggested that personal laws of Hindus and Muslims be preserved separate from such codification.

The Queen's Proclamation of 1859- It guaranteed total non-interference in religious affairs¹¹. In 1937, the conclusion for importance of UCC for the women equal rights by the B.N. Rau Committee led to the necessity to recommend the uniform civil code.

Article 44 of the Indian Constitution, which mandates that the state work to ensure a uniform civil code for all Indian citizens, was ratified by the Constituent Assembly in 1948.

After independence, during the constitution's development, major individuals such as Jawaharlal Nehru and Dr. B.R. Ambedkar advocated for a uniform civil code. However, due

¹⁰ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

¹¹ <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

to criticism from religious conservatives and a lack of awareness among the population at the time, they incorporated the UCC in the Directive Principles of State Policy (DPSP, Article 44)¹².

After Shah Bano Case decision, The Supreme Court found in her favor in 1985 under the All-India Criminal Code's "maintenance of wives, children, and parents" provision (Section 125), which applied to all citizens regardless of religion. It also suggested that a uniform civil code be established¹³.

ABOUT FEDERALISM:

Although the push for federalism in India dates back thousands of years, it was primarily an administrative and religious idea rather than a completely political one.

The king retained ultimate sovereign authority, and the subedars' powers were not entirely autonomous¹⁴. The colonial era and the ensuing evolution of constitutional frameworks are the origins of India's current federalism.

Through the Indian Council Act and the Government of India Act, the British eventually dissolved power from the ultimate government in Calcutta. Beginning with the British colonial era and continuing to the present, India's federalism has undergone multiple stages of development.

The British adopted the concept of an All-India Federation as a result of the Simon Commission report and the First Round Table Conference in 1930s¹⁵. The federal system was described in the Government of India Act of 1935, but it was never put into practice.

Federal provisions from the Government of India Act of 1935 were incorporated into the Indian Constitution by the Constituent Assembly. The blend aspects of federal and unitary system are regarded as quasi-federal in our constitution.

The characteristics of Indian federalism follows as its written constitution, bicameral system, dual government, division of power, independent & integrated judiciary, and supremacy of constitution.

¹² <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

¹³ <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

¹⁴ <https://www.lawctopus.com/academike/changing-dimension-of-federalism-in-india-the-new-challenges/>

¹⁵ <https://www.lawctopus.com/academike/changing-dimension-of-federalism-in-india-the-new-challenges/>

CHAPTER-3

THE APPREHENSION BETWEEN UCC & FEDERALISM:

One of the hindrances to the Uniform Civil Code's (UCC) implementation is the lack of agreement among different groups regarding what it should include. The cultural, religious, and legal diversity of India is at the heart of this dispute. It has been challenging to draft UCC due to varying opinions on the tenets and clauses of a common code¹⁶.

There are many different religions, ethnic groups, and cultural customs in India, and each has its own unique set of laws. Example:

- For Hindus, the document from ancient times i.e. manusmriti as the root with modern interpretations and reforming certain customs by abolishing them such as dowry and no inheritance by the girls.
- The Parsi and Christian communities following their own respective religious doctrines for marriage, inheritance, etc...
- Similarly, for the Tribal and Muslim community following their respective personal laws.

Some communities may oppose changes to their own laws, particularly if they believe the state is enforcing them rather than allowing them to develop organically through internal discussions or reforms¹⁷.

There may be conflict and opposition if a universal code is applied to all communities, particularly in areas where traditional laws are still commonly followed. Implementation may also be hampered by the nation's uneven legal literacy, particularly in rural or tribal areas¹⁸.

The Indian Constitution's Concurrent List covers personal affairs, especially those pertaining to marriage, divorce, inheritance, and other family matters. This enables state legislatures and Parliament, the federal government, to enact laws on these topics. As it says, the possibility of forcing a Uniform Civil Code (UCC) on all individuals could jeopardize the federal system by infringing on states' authority to enact laws pertaining to private affairs.

¹⁶ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

¹⁷ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

¹⁸ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

It can be argued that imposing a single, uniform legislation from the center would be an infringement on state authority. States may believe that doing so compromises their independence in handling issues that are intricately linked to regional traditions, customs, and religious beliefs¹⁹.

For example, customary laws regulate marriage, property, and inheritance in states with a sizable tribal population. The installation of a UCC may violate these conventional laws, which are under the jurisdiction of the local governments, and they may differ greatly from mainstream legal procedures.

Uttar Pradesh and Bihar have quite different social realities than states like Kerala, which has a sizable Christian community, and Nagaland, which has a sizable tribal population. These differences would need to be taken into consideration by a national UCC, which is challenging to accomplish in a universal code. For instance, enforcing a UCC without sufficient input may cause reaction because the Triple Talaq debate was a divisive topic within the Muslim community (now unconstitutional).

The secular character of the state may be undermined and social unrest may result if the UCC adopts the beliefs and customs of the majority religion, alienating minority communities and fostering division rather than unity. A legitimate and important worry is that a Uniform Civil Code (UCC) would marginalize minorities and reflect the views and customs of the majority religion. A UCC must be written in a way that is inclusive, secular, and considerate of the interests of all groups to prevent the degradation of cultural identities, religious freedoms, and minority rights. It must not force a majoritarian viewpoint on religious minority and instead honor the pluralistic character of Indian society²⁰.

CHAPTER-4

CORRESPONDANCE BETWEEN UCC²¹ & FEDERALISM²²:

A significant factor in the discussion surrounding its introduction is the claim that a Uniform Civil Code (UCC) may streamline the legal system and legal procedures by displacing separate personal laws based on religious convictions. A UCC might guarantee equality, simplify the legal system, and provide a more efficient judicial system by creating a uniform set of personal

¹⁹ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

²⁰ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

²¹ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

²² <https://unacademy.com/content/ssc/study-material/indian-polity-and-constitution/features-of-indian-constitution-federal-features/>

laws for all citizens. Furthermore, others contend that in some respects, such a step may reinforce the concept of federalism.

A UCC could lessen the possibility of discrimination based on community or religion by standardizing personal laws. People would not have to deal with a confusing web of religiously specific rules, and the legal system would not be burdened by the inconsistencies and complications that come with having several personal laws. Because all citizens would be treated according to the same legal standards, regardless of their religious beliefs, this could result in:

- Fairer outcomes in legal procedures.
- Decrease in the legal system's use of religious identity, which can promote better social integration and national unity.

Depending on local customs, different states may currently have varying interpretations of personal laws. By doing away with this variance, a UCC would guarantee that state and federal laws do not clash and that every citizen's rights are uniformly protected.

A UCC that guarantees equal treatment for all citizens, irrespective of their faith, would support the larger notion of unity in diversity, which is essential to Indian federalism. In this way, the UCC might support a more unified national identity in which all citizens, regardless of where they were born, receive the same legal treatment.

Certain personal laws, especially those rooted in antiquated religious customs, have come under fire for sustaining discrimination and inequality, especially against women and other vulnerable groups. By superseding such laws, a UCC might represent progressive ideals that support social justice and human rights.

India's adoption of a Uniform Civil Code (UCC) is frequently viewed as a step toward improving the nation's standing as an inclusive and progressive democracy abroad. In addition to bringing India's legal system into line with international human rights norms and contemporary democratic practices, it would demonstrate the country's dedication to the ideals of equality, fairness, and secularism. At the same time, federalism, and the implementation of a UCC might still be balanced to preserve state autonomy and national unity.

The UCC would be a clear indication that India, as a multicultural nation, aims to unite all its residents under a single legal system that upholds each person's rights and dignity. Given the

nation's high degree of religious variety, it would demonstrate that a person's legal rights and obligations are not determined by their religious identity. Internationally, this action would be viewed as a step toward a society that is more cohesive and inclusive.

India might portray itself as a nation that celebrates variety while guaranteeing that everyone has access to the same legal safeguards, irrespective of their cultural or religious heritage, by adopting a uniform civil code that is applied uniformly to all.

In India, the implementation of a Uniform Civil Code (UCC) necessitates a careful balancing act between upholding federalist ideals, encouraging gender equality, and guaranteeing justice for all residents. The Indian constitution stresses the value of equality, justice, and human rights while simultaneously guaranteeing the protection of religious freedom and cultural diversity. As a result, a well-designed UCC would have to integrate these principles in a way that honors Indian society's pluralism while guaranteeing that no one faces discrimination based on their gender or religion.

While making sure that these traditions do not infringe upon essential constitutional rights, a UCC might be created to honor the fundamental tenets of various religious practices.

CHAPTER-5

ANALYSIS:

The concept of federalism or we can also say the federal structure basically is the division of power, supremacy of the constitution, dual government, effective governance, bicameralism, written constitution, accommodation of diversity, independent judiciary, and the dispute resolution.

Article 35 (later changed to Article 44) of the Indian Constitution was shaped in large part by the Constituent Assembly's discussion on the Uniform Civil Code (UCC). A Directive Principle of State Policy, Article 35 (later renamed Article 44 in the final version of the Constitution) states that the state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India²³.

M.A. Ayyangar, a member of the Constituent Assembly, argued it as a matter of contract and stated all religions were accepted with equal respect and dignity under the Indian philosophy of secularism²⁴. K.M. Munshi, observed and stated that Article 35, which guarantees religious

²³ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

²⁴ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

freedom, provided the state the authority to control secular religious activities, thus Parliament could still pass a uniform civil code even if it did not exist²⁵. Religious minority' personal laws were not protected in some Muslim nations, such as Egypt and Turkey. Furthermore, the Shariat Act of 1937 forced some Muslim communities—such as the Khojas and Memons—to adhere to the Shariat even when they did not want to²⁶.

Even minorities were subject to uniform legislation in European nations. Personal law and religion ought to be separated²⁷.

The clauses of the Hindu Code Bill did not align with the principles of Yajnavalkya and Manu. Personal laws essentially discriminated against individuals based on their sex, which was prohibited by the Constitution²⁸.

Constituent Assembly member A.K. Iyer backed K.M. Munshi and encouraged the Assembly to approve the Uniform Civil Code²⁹.

In India, when it comes to criminal laws, irrespective of caste, creed, gender, or religion it is same for every citizen residing. The same law is followed as even after being diverse, to serve the purpose and aim of equality maintaining unity amongst the people according to the constitution. There are no such distinctions as to say that in our religion or community such are the punishment for any certain crime. For example, From the NIV Bible, Deuteronomy 22:28, if a man happens to meet a virgin who is not pledged to be married and rapes her and they are discovered, he shall pay the girl's father fifty shekels of silver. He must marry the girl, for he has violated her. He can never divorce her as long as he lives³⁰. Another example, in Islamic law the punishment for theft is amputation of the offender's hand³¹.

But when it comes to civil law of the country, we can observe a separation that is due to idea of having personal laws. Let's say, the Hindus following the Hindu law, the Muslims following the Muslim Personal Law, & many other (the Christian, Parsi or the tribal). This somehow is barrier in achieving the real essence of federalism.

²⁵ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

²⁶ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

²⁷ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

²⁸ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

²⁹ <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-uniform-civil-code/>

³⁰ <https://www.answering-christianity.com/que10.htm>

³¹ <https://astudyofquran.org/wp/8-topics-apparently-controversial/8-1-punishment-for-stealing/>

Numerous provisions of personal laws violate human rights. When human rights are in question this brings a threat to federalism as well because it protects them in either direct or indirect manner.

If we go through older times, there have always been changes running to ensure peace, rights, and justice in similar manner for all irrespective who, what or where they belong from or what community they reside in. For example, when the sati pratha in Hindu's was prevalent; it was abolished to safeguard women and their right to life which everyone has or the abolishment of untouchability or triple talaq becoming unconstitutional.

When the question arises about the apprehension, the points that come across are that in Indian constitution there are articles that prevents the solemnization as well ensuring the diversity contributing to federal character. For example, one important provision that protects minorities' rights to culture and education is Article 29 of the Indian Constitution. It is specifically intended to safeguard the rights and identities of members of various linguistic, religious, and cultural groups, guaranteeing their cultural independence and tradition-keeping. It may be interpreted in a manner which allows to follow their basic culture yet leading to have a common law structure like to deal with divorce or inheritance or any other such subject- matter which can be unified for all regardless of caste, creed, gender, or religion.

Another provision that ensures the Freedom to practice, profess, and propagate religion is stated under Article 25 of constitution of India. In case, if theirs a requirement for special or specific treatment in a particular subject-matter the article 15(3) {allows the state to make special provisions for women and children.}.

Goa has been the first state of India that has successfully implemented Art. 44 of the constitution of India. The second state that has implemented Art.44 of Constitution is Uttarakhand.

When interpretation comes it has a greater impact on society at large. As for the topic of UCC that is controversial for various political and religious reasons which picture at large is a boon to growth and development of our country but a major challenge for as to spread the real meaning, purpose, and awareness.

It will be a gradual and quite challenging procedure to implement Art.44 (DPSP) of our constitution because the large population and the administration at large. Also to clarify the misconception that has been formed due to lack of understanding of concept in common people.

This brings greater benefits like bringing justice to people in equal manner by the judiciary without any contradictions uniting the diverse people as one establishing another step to the spirit of federalism.

CHAPTER-6

CONCLUSION:

The need of the hour is for a uniform civil code. The legislative and the courts have both advocated for the establishment of the uniform civil code on numerous occasions. We can surely use the Goa civil code as a model for enacting it throughout the rest of the nation. No system is perfect; nonetheless, this does not mean that we should reject the system. There is always need for advancement and improvement. The federalism carries the essence of maintaining union and serving its purpose. We can say, union having a common goal in all to achieve which can be seen in the characteristic of the uniform civil code.

To grasp the spirit of the UCC, it is important to develop a progressive and open-minded view among the populace. Programs for education, awareness, and sensitization must be implemented for this. The best interests of all the major religions should be taken into consideration when writing the Uniform Civil Code. This also ensures the accommodation of diversity which is also an element to federalism or we can say to have a federal structure.

To maintain uniformity, a committee of distinguished jurists ought to be assembled, and care ought to be made to avoid offending any one community's feelings.

According to me UCC is a boon in disguise as every law comes with limitations and restrictions irrespective of any personal law. For instance, CrPc and IPC, any person committing any offence under it irrespective of any religion or minor group are trialed and punished as per laws established. Uniform justice is being served to any and every offender in the eyes of law. The purpose of law is to serve justice equally to all citizen of the country. And UCC is also a path to serve justice equally to all irrespective of personal laws. Also, it will contribute to establishing the supremacy of Constitution achieving the idea of federalism.