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## Uniform Civil Code: A Socio-Legal Perspective

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*After 70 years of the Indian constitution, the question is whether our constitution is ripe enough to set a uniform set of civil laws. The concept of the Uniform Civil Code is defined and its origins are explained, it compares the pros and cons of the Uniform Civil Code with the help of references from different scholastic theories. Moving further we will discuss the conflict between the Right to religion and the Right to equality while implementing the Uniform Civil Code. Implementation of UCC has always been a debatable topic in India. The one who does not favour this implementation tends to come out as the one neglecting women's rights in India and would be the one who does not support uniformity for the betterment of the country. Finally, we conclude this blog with recommendations and conclusions. It is imperative to ensure that unity, integrity, and equality are ensured among all citizens of the country, whether they are male or female, regardless of their religion.*

**Keywords:** *uniform laws, constitution, marriage, succession, socio-legal.*

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### INTRODUCTION

*“The greatest threat to our Constitution is our own ignorance of it.”*

*– Jacob F. Roecker*

Indian constitution has provision for UCC under article 44<sup>1</sup> of the directive principle of state policy. It states that the state shall endeavour to secure for citizens a uniform civil code throughout the territory of India. A Uniform civil code is the set that would govern all the citizens of the country by replacing all the existing personal laws (codified and uncodified) based on ancient scriptures and customs of each of the major religious communities of the country.<sup>2</sup> Personal laws are sets of laws that govern the matter of marriage, divorce, succession, maintenance, etc. major religious communities have their personal laws which are fully or partially based on scriptures and supported by customs and later on gained statutory recognition in the country. These personal laws play a vital role in society, especially in a country like India where thousands of languages are spoken and hundreds of communities reside<sup>3</sup>. Hence, these personal laws help to keep the communities and people of different religions city-centric<sup>4</sup>. UCC originated in the British Raj during the colonial rule in India. During that time Britishers felt the need for uniformity in Indian laws related to crime, evidence, contract, etc. However, they stressed keeping the personal laws governing Hindus and Muslims out of this concept of UCC. This was submitted in the report “The Lex Loci Report of October 1840<sup>5</sup>” Britishers feared opposition from various community leaders at the time of their rule hence the decision to keep the personal laws out of the ambit of UCC was taken<sup>6</sup>.

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<sup>1</sup> Constitution of India, 1950, art. 44

<sup>2</sup> Rishabh Gupta & Aditi Banerjee, ‘A Tussle Between Equality and Faith: Uniform Civil Code v Article 25’ (2021) <sup>3</sup> (1) International Journal of Legal Science & Innovation <<https://www.ijlsi.com/39-a-never-ending-tussle-between-equality-and-faith-uniform-civil-code-v-article-25/>> accessed 10 May 2022

<sup>3</sup> Aditya, ‘Special Marriage Act (1954) as a Precursor of Uniform Civil Code’ (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-6332-special-marriage-act-as-a-precursor-of-uniform-civil-code.html#:~:text=The%20Special%20Marriage%20Act%20can%20be%20one%20of%20the%20keys,simple%20process%20to%20register%20marriage>> accessed 10 May 2022

<sup>4</sup> Shramana Sengupta, ‘Uniform Civil Code: Myth and Reality’ (*Jus Commune*, 2 August 2020) <<https://thejuscommune.wordpress.com/2020/08/02/uniform-civil-code-a-myth-or-reality/>> accessed 10 May 2022

<sup>5</sup> D.C. Manooja, ‘Uniform Civil Code: A Suggestion’ (2000) 42 (2/4) *Journal of the Indian Law Institute*, 448-457 <<https://www.jstor.org/stable/43953824>> accessed 10 May 2022

<sup>6</sup> Jyoti Rattan, ‘Uniform Civil Code in India: A Binding Obligation Under International and Domestic Law’ (2004) 46 (4) *Journal of the Indian Law Institute*, 577-587 <<https://www.jstor.org/stable/43951938>> accessed 10 May 2022

**DR B R AMBEDKAR'S OPINION ON UCC**

Post-Independence, several constituent assembly debates were held by the framers of the constitution of India. Founding father of the constitution B R Ambedkar himself recommended UCC to be put in article 35 of the constitution. He also suggested keeping the personal laws out of the ambit of UCC and the implementation of UCC should be voluntary in nature<sup>7</sup>. Community leaders and Muslim representatives stressed keeping personal religious laws as it is, stating that these are the pillars of religious customs and traditions. However, the consequence of the above discussion was that the concept of UCC was only in article 44 of the Indian Constitution, 1949<sup>8</sup>. In these assembly debates, honourable B R Ambedkar was against the amendments to the article raised by Muslim representatives present at the table. He said “Now I must confess I was very much surprised at the statement, for the simple reason that we have a uniform civil code of law for almost every aspect of human relationship. We have the Indian penal code and criminal procedure code. We have the transfer of property which deals with property relations and which is operative throughout the country then we have the Instruments act: and I can cite innumerable enactments which would prove that this country has practically a civil code, uniform in its content and applicable to the whole country. The only province that has been untouched is marriage and succession.” It was astounding to read what honourable B R Ambedkar mentioned in his argument. He said “This little corner of personal laws has been able to invade so far and it is the intention of those who desire to have article 35<sup>9</sup> as a part of the Indian constitution to bring about the change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform civil code in this country. It is therefore too late now to ask the question of whether we could do it. As I say, we have already done it.”

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<sup>7</sup> P. Koteswar Rao, *Shah Bano's Case and Uniform Civil Code-A Survey of Public Opinion Among Muslim Community at Tirupati* (1985) 27 (4) *Journal of the Indian Law Institute*, 572-577 <<https://www.jstor.org/stable/43953017>> accessed 10 May 2022

<sup>8</sup> Virendra Kumar, *Uniform Civil Code Revisited: A Juridical Analysis of John Vallamattom* (2003) 45 (3/4) *Journal of the Indian Law Institute*, 315-334 <<https://www.jstor.org/stable/43951867>> accessed 10 May 2022

<sup>9</sup> Constitution of India, 1950, art. 35

## ANALYSING INDIA'S SCENARIO

Article 25 and 26<sup>10</sup> of the constitution reserves the fundamental right concerning the right to religion which is enforceable in a court of law. There is a probable conflict between the right to religion and the right to equality confiscated in the matter regarding implementation of UCC which has been further discussed. Implementation of UCC has always been a debatable topic in India. The one who does not favour this implementation tends to come out as the one neglecting women's rights in India and would be the one who does not support uniformity for the betterment of the country. Those who support the implementation of UCC tend to come out as the ones neglecting the reality that diversity and coexistence of various religions in the society maintain harmony among the existing religions in a country like India.

The diversity of Indian society does not allow parliament to reform personal laws. In her article titled "Expanding Gender Justice Under Muslim Law," Sabeeha Bano writes for EPW that "the broad agreement that appears to be emerging in Indian society with respect to the introduction of a Uniform Civil Code is that such an enactment is a challenging concept, but, the goals attempted to be achieved by enacting the Uniform Civil Code can be summed up as follows:

- achieve equally well by an internal process of reforming various personal laws;
- the initiative was taken by the communities.

The Uniform Civil Code (UCC), as envisioned by some of the Constitution's authors, was intended to establish legislation that would give women more advantageous provisions in the fields of marriage, divorce, inheritance, maintenance, custody, and adoption. It was opposed on religious freedom and other reasons interfering with the personal laws of each town." They went on to investigate the modern. The UCC's position stated, "Today, the Hindutva forces that have long resisted any changes in women's roles and positions have pushed the UCC to the top of their political agenda. The argument has grown heated between pro-UCC and pro-BJP positions v pro-personal laws positions and an anti-UCC stance." The Hindu chauvinists

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<sup>10</sup> Constitution of India, 1950, art. 25, and art. 26

are another type of UCC sympathizers who have made the process even harder. The Sangh Parivar – which comprises all shades of Hindu nationalists – has always used MPL as a tool for Muslim bashing, and Muslim fundamentalists have rallied the community around MPL in a fear-driven process to protect it from these forces. Thus, community identity politics complement each other's growth, but at the expense of Muslim women's fundamental rights. In light of this, the third group, which favours improvements within personal laws, appears to be more feasible and acceptable to many Muslim reformists as well as women's organisations. Attempts to organize a voice for MPL reform have been made numerous times since independence. Several organizations, individuals, and women's organizations have started discussions about this. The Indian Express (Mustafa) reported in July of this year that the government has ordered the Law Commission to look into the topic of a Uniform Civil Code. Law Minister Sadanand Gowda has stated that "wider consultations" with numerous personal law boards and other stakeholders will be performed in order to reach a consensus, and that the process may take some time. The next day, the India Express reported retired Justice A R Laxman's dissatisfaction that the UPA did not pay attention to his report on UCC, saying, "Everything was put in cold storage by the previous government." They didn't do anything about it. I am disappointed that no attempt was made to investigate the viability of the Uniform Civil Code." He also stated that his assessments were detailed and particularly referred to the necessity for a uniform code in the greater public interest, but the government simply ignored them.

#### **ARGUMENTS: FOR AND AGAINST**

The State Legislature may have believed that the Hindu population was better ready for the proposed reform. For many years, social reformers among Hindus have campaigned strongly for this reform, and the Hindus' social conscience, according to the Legislature, may have been more in tune with the spirit of the proposed reform. (Ali) Furthermore, divorce has always been legal among the Mahomedans, and marriage is a contract between them. If the State Legislature, based on such grounds, opted to implement this reform first among Hindus, it would be hard, in my opinion, to hold that the challenged Act violated the equality before the

law required by Art. 14<sup>11</sup> by limiting it to Hindus as defined by the Act. As a result, in my opinion, the allegation that the contested Act violates Art. 14 must fail.

## CONCLUSION

Personal laws in India have been developed in such a way that it is nearly impossible to change/altercate the entire act. Questions about women's rights have always been a debatable topic for a country like India. Personal laws are discriminatory towards women from an initial stage and have been proven strict and unamendable, especially the Christian and Muslim personal laws. Thus, the Implementation of UCC might seem like a necessity in contemporary times, in order to attain equality for women. The present situation of India, which contains a huge diversity among the masses of different religions, caste, customs, tribes, etc., does not favour the implementation of UCC in current times or near future. UCC cannot be implemented by causing insurrections in the society, rather it is a slow process and will take many decades to implement and then finally come into effect. We have come midway to achieving uniformity in society through criminal, procedural, and evidence laws in India. AS far as personal laws are concerned, they hold a soft spot in the hearts of people, from the Victorian age. It is not quite possible to take away/dissolve these laws and practices which have been replicated from scriptures and traditions of a particular religion. The major change that we need in India is “acceptance” and as of now, this country is not ready to.

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<sup>11</sup> Constitution of India, 1950, art. 14