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## Consequences of Uniform Civil Code on integrity and Social Life of India

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*The Uniform Civil Code aims to form a single code applicable to all citizens regardless of their religion, gender, or caste. In India, Goa is the only state with a Uniform Civil Code. A uniform Civil Code will bring positive changes to society, including gender equality. However, the Law Commission of India has stated that it is not needed at this time. This article also specifies instances where the Supreme Court has emphasized the need for a Uniform Civil Code. At the same time, there are some challenges that we cannot ignore. Also, the situations of the country where the Uniform Civil Code was enacted should be taken into consideration. Every community is governed by its own respective personal laws. Some laws are codified while others are not. Certain solutions are being stated in this Article including spreading awareness. At no cost, the fundamental rights and interests of communities must be kept at stake.*

**Keywords:** *uniform, fundamental right, equality, justice.*

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### INTRODUCTION

The Uniform Civil Code is a formulation of one country, one rule, which shall apply to all citizens of India irrespective of their gender, caste, creed, or race. The uniform civil code will play an important role in matters of marriage, adoption, succession, and divorce. The Uniform

Civil Code is enshrined as Article 44 of Part IV under the Directive Principle of the Constitution of India. Article 44 states, *“Uniform civil code for the citizens. – The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*<sup>1</sup> However, Article 37 provides, *“The provisions contained in this Part shall not be enforceable by any court, but the directive principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”*<sup>2</sup> It signifies that, despite this part being mentioned in the Constitution, its implementation is not mandatory and is unenforceable.

### ABOUT UNIFORM CIVIL CODE AND PERSONAL LAWS

The establishment of the Uniform Civil Code will set aside all Personal laws which were introduced after the consideration of their respective religious texts, customs, and cultures. Moreover, the Uniform Civil Code will bring a law that is common to all the citizens of India. The foundation Personal laws of Hindus and Muslims are based on these factors. This Personal law includes the Hindu Marriage Act<sup>3</sup>, Hindu Adoption and Maintenance Act<sup>4</sup>, Hindu Succession Act<sup>5</sup>, Muslim Women Act<sup>6</sup>, Indian Divorce Act<sup>7</sup>, and Parsi Marriage and Divorce Act<sup>8</sup>. *Hindu laws are based on ancient religious texts like Vedas, Gathas, and Smits, religious scripture like Bhagavad Gita, and the modern concept of equality, rights, justice, and legislation was also taken into consideration. Likewise, Muslim laws are based on a religious text like The Qur'an, also the Sunna of Hadis, Ijma, and Qiya are other primary sources, and the modern concept includes equality, rights, justice, and legislation. Also, Christian personal laws are based on religious scripture like the Bible, and modern concepts same as that of Hindu or Muslim personal laws.*<sup>9</sup>

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

<sup>2</sup> Constitution of India, 1950, art.37

<sup>3</sup> Hindu Marriage Act, 1955

<sup>4</sup> Hindu Adoption and Maintenance Act, 1956

<sup>5</sup> Hindu Succession Act, 1956

<sup>6</sup> Muslim Women Act, 1986

<sup>7</sup> Indian Divorce Act, 1869

<sup>8</sup> Parsi Marriage and Divorce Act, 1936

<sup>9</sup> Abhishek Chakraborty, 'As Clamour for UCC rises, here's what you need to know about Uniform Civil Code' (*India Today*, 28 April 2022) <<https://www.indiatoday.in/india/story/uniform-civil-code-in-india-ucc-bjp-muslim-hindu-personal-law-marriage-act-1942830-2022-04-28>> accessed 11 June 2022

## ARGUMENTS IN SUPPORT OF THE UNIFORM CIVIL CODE

In addition to simplifying the complex and inconsistent Personal Laws, the objective of the Uniform Civil Code is to address the discrimination against vulnerable sections including religious minorities, and women, and to provide equal treatment to all citizens. The Uniform Civil Code will not only provide equal treatment to all citizens but also protect citizens against discrimination based on the subject matter of marriage, divorce, maintenance, inheritance, succession, and adoption. It aims to integrate India by including all citizens under one uniform code. Being a codified law, the Uniform Civil Code will provide rights to women by promoting gender equality. It will reduce the dependency of women on men, and will foster women's empowerment. This one code for all nationals will decrease the complexity of the judicial process due to Personal Laws. It will help in the efficient administration of Justice. Furthermore, *the Personal laws are prejudicial, in the matter of polygamy, providing rights to Christian women for obtaining a divorce on grounds of adultery, getting custody of a child, providing a woman with her right in the ownership of property, and rights of women during divorce, maintenance, and succession.*<sup>10</sup> In the case of *Mohd. Ahmed Khan v Shah Bano Begum and Ors.*,<sup>11</sup> where the woman was denied maintenance by her husband, the Supreme Court by emphasizing the need for Uniform Civil Code, held that Section 125 of the Criminal Procedure Code<sup>12</sup> is applicable irrespective of the religion of women. In various other cases, the Supreme Court highlighted the need for the urgency to establish a Uniform Civil Code for our country, including *Sarla Mudgal v Union of India*,<sup>13</sup> where the issue was raised as to whether Hindu marriage would be dissolved after the conversion of the Hindu husband to Islam, the court held that Hindu marriage can only be dissolved under the Hindu Marriage Act, 1955. Also, in the case of *John Vallamattom and Ors. v Union of India*,<sup>14</sup> the constitutional validity of Section 118 of the Indian Succession Act was upheld.

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<sup>10</sup> Vibhuti Patel, 'All personal laws in India are discriminatory' (*Live Mint*, 22 August 2017) <<https://www.livemint.com/Opinion/Cn69qE9pQCImtQzzvw1oVP/All-personal-laws-in-India-are-discriminatory.html>> accessed 16 June 2022

<sup>11</sup> *Mohd. Ahmed Khan v Shah Bano Begum and Ors.*, (1985) 3 SCR 844

<sup>12</sup> Criminal Procedure Code, 1973, s 125

<sup>13</sup> *Sarla Mudgal v Union of India* (1995), AIR 1531

<sup>14</sup> *John Vallamattom and Ors. v Union of India* (2003) 6 SCC 611

## **WILL IT VIOLATE THE FUNDAMENTAL RIGHT TO RELIGION?**

India is a secular country. Article 25 to Article 28 of the Constitution of India<sup>15</sup> provides the Right to freedom of Religion. The Uniform Civil Code is enshrined under the directive principles which are not enforceable, whereas the provision of the Right to freedom is provided under the Fundamental Rights which are justiciable. As the directive principles are mere guidelines for the state, they will not affect the fundamental right to religion. Also, the Supreme Court in the case of *Kesavananda Bharati v Union of India*<sup>16</sup> held that, even due to the constitutional amendment, the Basic Structure of the Constitution shall not be annulled. It implies that by the introduction of the Uniform Civil Code, the basic structure of the Constitution which includes Secularism will not be abrogated.

## **ARGUMENTS POINTING OUT THE PITFALLS OF THE UNIFORM CIVIL CODE**

*However, on 31st August 2018, the Law Commission of India pointed out that the Uniform Civil Code is neither mandatory nor desirable. Also, it was found that cultural diversity cannot be compromised. The need for forming a Uniform Civil code might hinder the territorial integrity and religious diversity of the nation.*<sup>17</sup> The subject matter of Personal Laws is enshrined in the Concurrent List instead of the Union List in the Constitution of India. So, after replacing Personal Law, the Uniform Civil Code would be a part of the Concurrent List. This implies that the Parliament would not have exclusive jurisdiction in the matter of the Uniform Civil Code which is a central matter. At the same time, it was argued that this would be a manifestation of a modern progressive nation if all the citizens would get the same treatment. Yet this change has to come from within the society, instead of implementing it as a part of the law. There is apprehension among the citizens as well, that this implementation will limit their fundamental right to religion. Further, the Personal Law of a certain religion is not codified. They are entirely based on religious scriptures. For instance, the Personal Laws of Hindus are codified whereas the Personal Laws of Muslims are not.

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<sup>15</sup> Constitution of India, 1950, art.25 to art.28

<sup>16</sup> *Kesavananda Bharati v Union of India* (1973) 4 SCC 225

<sup>17</sup> Krishnadas Rajagopal, 'Uniform civil code neither necessary nor desirable at this stage, says Law Commission' (*The Hindu*, 31 August 2018) <<https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article61498390.ece>> accessed 11 June 2022

Moreover, the Code says, 'Uniform', not a 'Common or 'Single' Code for all citizens. It signifies that the law should be uniform among various communities. It points out that communities need uniform rights. Also, the word 'Code' does not mean a single law or Act but having either a single enactment or a Bill including different Acts.<sup>18</sup> Certain measures and amendments in personal laws can be made as a substitute for the Uniform Civil Code. For instance, by making a provision for uniformity in the minimum age of marriage. Making a provision for the unreasonable one-year waiting period, in case of mutual divorce in the Christian religion.<sup>19</sup> Measures should be taken to make polygamy a criminal offence in all religions. Even Goa has a Uniform Civil Code. In Goa, all religions are governed under the same rule for marriage, divorce, succession, adoption, and inheritance.<sup>20</sup>

## UNIFORM CIVIL CODE IN COMPETITION AGAINST PERSONAL LAWS

Personal laws focus on respective religions in general, whereas the uniform civil code is going to bind all citizens under one rule. Even countries like the US, UK, South Africa, Kenya, Greece, Indonesia, and Bangladesh are governed under Personal Law.<sup>21</sup> Although personal laws are complex, and contradictory in nature, it still has maintained the unity and integrity of the nation. Since 1804, France has had a Uniform Civil Code, which was established by Napoleon. Yet, it did not provide gender equality; women had not got equal rights and had to still obey their husbands.<sup>22</sup> So we cannot come to a point where a single Code will bring gender equality and integrity to the nation.

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<sup>18</sup> Faizan Mustafa, 'An Expert Explains: The issues in uniform civil code' (*The Indian Express*, 15 February 2022) <<https://www.google.com/amp/s/indianexpress.com/article/explained/expert-explains-issues-in-uniform-civil-code-7771828/lite/>> accessed 16 June 2022

<sup>19</sup> Legal Correspondent, 'Cooling –off time' for Christian divorces may be cut' (*The Hindu*, 9 May 2016) <<https://www.thehindu.com/news/national/coolingoff-time-for-christian-divorces-may-be-cut/article8573228.ece>> accessed 17 June 2022

<sup>20</sup> 'Uniform Civil Code: Goa Only State in India to Follow Common Law; Know Why It's An Exception' (*News18*, 24 March 2022) <<https://www.news18.com/news/politics/uniform-civil-code-go-only-state-in-india-to-follow-common-law-know-why-its-an-exception-4905719.html>> accessed 13 June 2022

<sup>21</sup> Werner Menski, 'UCC: Don't look to the West, India has evolved its own way' (*The Times of India*, 14 September 2017) <<https://timesofindia.indiatimes.com/india/dont-look-to-the-west-india-has-evolved-its-own-way/articleshow/60507425.cms>> accessed 15 June 2022

<sup>22</sup> Gurpreet Mahajan, 'Why the West offers no models for a Uniform Civil Code' (*The Times of India*, 15 September 2017) <<https://timesofindia.indiatimes.com/india/why-the-west-offers-no-models-for-a-uniform-civil-code/articleshow/60522634.cms>> accessed 15 June 2022

## **CHALLENGES AHEAD**

There is a threat that the Uniform Civil Code will be in the favour of the majority. It has been a major concern for the minority that it will impose rules against their own culture and customs. They fear that they will be forced to practice the religion of the majority, and it will take away their religious identity. Moreover, there are different laws enacted for different communities, taking into account all of them is a tedious and challenging task. Furthermore, every religion has different customs and traditions, so it will be difficult to bind every citizen under the same rule. Opposition to the Code from different communities is again a major obstacle. So, maintaining religious diversity along with the implementation of this Code is another task. Also, every religion is governed by different laws and Acts regarding the same subject matter like marriage and divorce. There are Personal Laws that are based on primary sources like religious scriptures. Taking into consideration and giving due importance to both codified and un-codified laws is yet another challenge. Imposing uniformity in a nation that is already known for its diversity in culture, tradition, religion, and customs will be a task.

## **SOLUTIONS**

There is fake news, irrelevant information, and certain misconceptions among people about this Code. Spreading awareness and providing the right information regarding the Uniform Civil Code is the need for an hour. It should be made clear to the people that the Right to profess and practise one's religion is a fundamental right guaranteed in the Constitution of India and no one is going to take it away from them. Furthermore, the Uniform Civil Code should take into account the interests of all religions and communities. For this, before implementing the Code, the Government should hear the views of all communities. The Government must make sure that religious diversity is maintained. Only the subject matter which is common to all the religions like divorce, succession, adoption, and inheritance should be made uniform. A similar provision was also adopted in Goa. Under Article 14 and Article 15 of the Constitution of India, the Uniform Civil Code will be under the purview of judicial review; hence this Code will not be discriminatory and this must be pointed out to people. Also, the legislature will be given the power to reform them or make certain amendments. The

Government must also put forward a rough draft to show, what will be included in the Uniform Civil Code.

## CONCLUSION

The Uniform Civil Code is a formulation of one country, one rule. Undoubtedly, it will either replace the personal law or will be a blend of it. Just like, every coin has two sides, so does the Uniform Civil Code. It is anticipated that it will lead to gender equality by giving equal rights to all women. Minorities and vulnerable groups will be protected from discrimination. Addressing the loopholes of Personal Law will reduce the complexity of the judicial process. However, it is a cause of concern that this Code might hinder the cultural and religious diversity of the nation. Under no circumstances should the Uniform Civil Code be imposed forcefully, without taking into account the interests of all religions. The questions as to, whether a single law would change the mentality of citizens about gender equality, discrimination against minorities, and the rights of women are still unanswerable. Certainly, it will be a positive change if the Uniform Civil Code binds all citizens under one rule concerning the subject matter of divorce, marriage, adoption, inheritance, and succession. Furthermore, awareness about the Uniform Civil Code is still needed to fix the misconceptions about it. It should be made evident that there will be no hindrance to the fundamental rights if the Uniform Civil Code is implemented; so that cultural diversity is maintained. In my opinion, the Uniform Civil Code should be implemented after analyzing all its pros and cons. Being a secular country, the situation of India is quite different from other countries. The uniform civil code must be implemented after ensuring that it will not hinder the religious sentiments of a particular community. Like Goa, it should not violate fundamental rights and shall have one rule regarding the matter of marriage, divorce, succession, adoption, and inheritance.