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# EQUILIBRIUM BETWEEN UNIFORM CIVIL CODE AND PERSONAL LAWS: A STEP TOWARDS A PROGRESSIVE SOCIETY

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## ABSTRACT

The Indian society is a blend of people with diverse cultures and religions living in harmony and respect with each other. The Indian citizens are ruled by their personal laws. Personal laws, being a branch of Private law govern matters like marriage, adoption, inheritance, and divorce.

There has been a long ongoing debate between the Uniform Civil Code and Personal Laws. It is often proposed by the supporters that the Uniform Civil Code will help to achieve gender equality, secularism and national integration. Uniform Civil Code will be a step towards a progressive society based on equality and justice.

On the other hand, opponents argue that the Uniform Civil Code might infringe religious freedom, lead to a loss of cultural identity, and create a sense of insecurity among minorities and also the practical challenges involved in the implementation of a uniform code that respects India's vast religious diversity.

The term Uniform Civil Code is mentioned under Article 44 of the Constitution of India as a Directive Principle of State Policy. While providing the uniform civil code the State should try to maintain harmony between Fundamental Right i.e. freedom of religion under Article 25-28 and Uniform Civil Code.

Through various significant Judgements like Shah Bano, Sarla Mudgal, and Shayara Bano, the Indian Judiciary has also laid stress on the necessity for a Uniform Civil Code.

The article's primary focus is to explore the history, significance, and issues connected with Personal Laws and the Uniform Civil Code. The requisite for today's time is to achieve an equilibrium between personal laws and uniform civil code as it will lay down the base of a progressive society.

**Keywords:** Personal Laws, Secularism, Progressive Society and Directive Principle of State Policy, Uniform Civil Code

## 1. INTRODUCTION

India is a sacred land of people having different religions and cultures. India is a perfect example of unity in diversity. Persons from diverse religion and culture have been living here for centuries. People belonging to different religions like Hinduism, Sikhism, Islam, Buddhism, Jainism, Christianity etc. are united by an invisible thread that bind the people together as one.

India being a secular state does not embrace any particular religion as the religion of state. There has been observance of policy of religious tolerance and equality among different religions in India since centuries and people are governed by their personal laws. There is no one law that governs them in personal matters like marriage, adoption, inheritance etc. India culture brilliance resides in its integral yoga of laws and spirituality, which blends the more subtle elements of legality and spiritual ideas inside the Dharma The law and religion were not viewed as separate from each other by the Hindu Sages, the Buddhist and Jain Seers as well as the Sikh Saints and other socio religious reformers rather they regard them as mutually interacting and cross-fertilising.<sup>1</sup>

Also, in **St. Xavier's College Society v. State of Gujarat**<sup>2</sup>, it was ruled by the supreme court that, India is the second most populous country of the world. The people residing in this vast land profess different religions and speak different languages. Despite the diversity of language and religion, there runs through the fabric of the nation the golden thread of a basic innate unity. There is synthesis of different religions, language and cultures.

Uniform Civil Code is a highlighted issue since a long time. It has been a debated issue since long time but still there is no precise solution arrived. The Article 44 of The Constitution of India states that the State should secure Uniform Civil Code for India. The term Uniform Civil Code is not defined in the constitution. Uniform Civil Code means uniform application of personal laws irrespective of caste, religion, community, etc. It can be inferred that by including the Article 44 as a directive principle it was a key envision of the Constitution Makers to have a Uniform Civil Code for India. In basic terminology,

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<sup>1</sup> V.R. Krisna Iyer. *Law and Religion* (Delhi: Deep and Deep Publications, 1984) 6.

<sup>2</sup> *St. Xavier's College Society v. State of Gujarat* (1974) AIR 1974 SC 1389.

There are two set of laws governing the people i.e. Public Law and Private Law. Public law refers to that branch of law which studies the relation of individual and state. Public law studies the issues that affect society as a whole. For example: Administrative law, Constitutional laws, Criminal laws, International Laws, Municipal Laws etc.

Private Law on the other hand is that branch of law that deals with the relation of private individuals. For example, Torts, Contract, Family laws etc.

## 2. PERSONAL LAWS

Personal law is a branch of private law and covers diverse matters like marriage, divorce, adoption, succession etc. The Indian society abounds in personal laws. The personal matters of every religious community are governed by its own laws.<sup>3</sup>

Religion plays an important role in shaping an individual and people of different religions are governed by their personal laws according to the religion they belonged. There is a sense of belongingness to one's religion. People are governed in matters relating to property, marriage, adoption, succession, custody etc. on the basis of religion they belong.

Attachment to one's religion is a natural sentiment and every individual wants to be governed by his/her religion. For example, a Hindu wants to follow his religion and would like to be governed by his religion on other hand a Muslim will like to follow principles of his religion and governed by his religion. The attachment with one's religion is the primary reason that people belonging to different religions are governed by their personal laws.

The Indian model of concurrently managing personal laws as part of the legal system of the nation state shows that any kind of ethnic differences can be regarded legally relevant without compromising a state's stability or viability.<sup>4</sup>

Personal law matters like marriage, inheritance etc. are covered under the concurrent list of the Constitution.

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<sup>3</sup> Dr. Paras Diwan and Peeyushi Diwan. *Muslim Law in Modern India* (Faridabad: Allahabad Law Agency, 2018) 1.

<sup>4</sup> Werner F. Mensi. *Hindu Law Beyond Tradition and Modernity* (New Delhi: Oxford University Press, 2008) 597.

### 3. BACKGROUND OF PERSONAL LAWS

#### 3.1 Personal Laws during Ancient India

The fundamental principles of the Hindu Law can be found in the sacred works the 'Vedas' and the epics of 'Bhagwat Gita', 'Ramayana' and 'Mahabharata'. In ancient time no distinction was considered between private and public law.

Manu is regarded as the first law giver. There are 12 chapters in the code of Manu. Out of 12 chapters 8 chapters deal with various subjects of civil and criminal law and the rest deals with the moral rules and religious sacraments. Law was regarded as an integral part of religion by the Hindus.<sup>5</sup>

Hindu Law is regarded as a divine law, revealed law. It is propounded that some of the Hindu sages had attained great spiritual heights, so much that they could be in direct communication with the God and the sacred law was revealed by them to God. This revelation is contained in Vedas.<sup>6</sup>

During ancient India, King did not meddle in the personal matters of people. Rather the king and his people were equally bound by law provided by the sages which included the element of self-sanction. The laws were regarded as a fundamental part of religion by the Hindus and the behaviour of the people was also directed by their religion. Although, local customs and usages had also obtained the force of law.<sup>7</sup>

#### 3.2 Personal Laws during Medieval India

During Medieval India there was predominance of Islamic laws in India as most of the rulers were Muslims. During the medieval period with the advent of Mughals in India, Muslims came into India. In most parts, Islamic public law was applied to all subjects irrespective of their religion.

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<sup>5</sup> Mr R.P. Choudhary and Dr. C.V. Raman, "Evolution of Personal Laws in India", *Pramana Research Journal*, Volume 8, Issue 4 (2018).

<sup>6</sup> Dr. Paras Diwan and Peeyushi Diwan. *Modern Hindu Law* (Faridabad: Allahabad Law Agency, 2021) 27.

<sup>7</sup> Mr R.P. Choudhary and Dr. C.V. Raman, "Evolution of Personal Laws in India", *Pramana Research Journal*, Volume 8, Issue 4 (2018).

The primary source of the Muslim personal law was Quran. The Koran is the fundamental source of Muslim law and contains about 6000 verses. Out of a total of 6000 verses of the Koran, not more than 200 verses deal with rules and principles of law. The rules and principles of law are laid down only in that portion of the Koran which was revealed to Prophet at Madina.<sup>8</sup>

While members of other faiths were permitted to follow their traditions and culture, only Muslims were governed by Islamic Private law. Hence the personal laws were confined to customs and conventions of their religious communities.<sup>9</sup>

### **3.3 Personal Laws during British India**

The Britishers like the Mughals did not interfere in the personal laws of the country; they looked after the criminal matters mostly. The Britishers let affairs of the Indians with regard to marriage and inheritance are governed by their personal laws.

Until 1860, the British-run courts dealt with personal laws of Hindus and Muslims. They were assisted by the Pundits and Qazi's. During their last years, attempts were made by the Britishers to codify the personal laws. In 1834, the 1st Law Commission was established. Although some laws were passed around the 1860s, including the Indian Divorce Act of 1869, and the Marriage Dissolution Act of 1866. The Kazis Act 1881 was passed on the proposal of Sir Syed Ahmad Khan. Several other legislations were too passed.<sup>10</sup>

### **3.4 Position after Independence**

The Constitution makers included Uniform Civil Code as a Directive Principle of State Policy by providing it in Article 44 of the Constitution of India. The Constitution makers were aware that at that time it was not possible to draft a single uniform law that would deal with the personal matters of all irrespective of the fact to the religion they belong. So, they included Uniform Civil Code as a Directive Principle of State Policy and left it on state to provide a

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<sup>8</sup> Dr. Paras Diwan and Peeyushi Diwan. *Muslim Law in Modern India* (Faridabad: Allahabad Law Agency, 2018) 30.

<sup>9</sup> Lekshmi Parameswaran, "History of Personal Laws in India", *India Policy Foundation*, April 2020.

<sup>10</sup> Mr R.P. Choudhary and Dr. C.V. Raman, "Evolution of Personal Laws in India", *Pramana Research Journal*, Volume 8, Issue 4 (2018).

Uniform Civil Code when the right time arrives. After independence an attempt was made to codify the Hindu Law.

A brief look overlook over the laws dealing with the personal laws is as under:

#### **4. LAWS GOVERNING PERSONAL LAWS IN INDIA**

##### **4.1 Hindu law**

Attempts have been made by the Indian legislature to codified the Hindu law through acts like the Hindu Marriage Act,1955; The Hindu Adoption and Maintenance act,1956; The Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956. The term Hindu covers Hindus, Sikhs, Buddhist and Jains and also includes ViraSaiva, Lingayat and followers of Brahmo, Prathana or Arya Samaj.

##### **4.2 Muslim law**

In India the Muslim Law is mostly based on Sharia. The law and religion in Islam are so entwined that it is difficult to separate them. The two streams of Sariah and Fiqh run in one channel. Law and Religion are included in Shariah and at times they are in conflict.<sup>11</sup>

Muslim are partly governed by their uncodified law and partly by legislations like Dissolution of Muslim Marriage Act ,1939, Muslim Women (Protection of Rights on Marriage) Act,2019 etc.

##### **4.3 Christian law**

Christian personal law deals with various matters like adoption, marriage, succession etc. Some of the legislations dealing with Christian personal laws are The Indian Christian Marriage Act,1872, The Cochin Christian Civil Marriage Act 1905, The Converts Marriage Dissolution Act,1866 and the Indian Divorce Act,1869.

##### **4.4 Parsi law**

There is separate statutory Parsi Law for India i.e. Parsi Marriage and Divorce Act,1936. The

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<sup>11</sup> Sir Rashid Syed Khalid and V. P Bharatiya. *Muslim Law* (Lucknow: Eastern Book Company, 2009) 2.

succession to immovable property is regulated by The Indian Succession Act, 1925.

## 5. INDIA – A SECULAR STATE

There is no one religion of India. India is a secular state. A secular state is one which does not embrace any particular religion but observes principle of equal respect to all religions. There is no state religion. Everyone has freedom to follow, propagate and embrace their religion as they wish. Freedom of religion is guaranteed as a fundamental right by the Constitution of India. Articles 25-28 of the Constitution of India secures Indian citizens right to freedom of religion.

The principle that the State is concerned with the relation between man and man and not with the relation between man and God, which is a matter for individual conscience, is based on secular nature of Indian society. A Secular State observes a neutral and impartial stance towards all religions. It should be the primary duty of the State to treat all religions and religious groups equally and with equal respect without infringing on one's right to religion, faith, and worship.<sup>12</sup>

The term Secularism was added by 42<sup>nd</sup> Amendment, 1972 in the Preamble whereas Article 25-28 talking about the concept of secularism was added by the original framers of the constitution. The concept of secularism which was earlier implicit was now made explicit.

## 6. UNIFORM CIVIL CODE

The term Uniform Civil Code itself enfold its meaning. It provides for one law that will governs each and every individual irrespective of the religion governing them.

Uniform Civil Code is incorporated in our constitution through Article 44 which provides that the state shall endeavour to secure for its citizen Uniform Civil Code throughout the territory of India. Article 44 is included under the Directive Principles of State Policy. The Directive Principles of State Policy are not enforceable by courts although they are fundamental in governance of the country and it is the duty of the states to apply them. The term Uniform Civil Code has not been defined anywhere in the constitution. In generic sense it means applicability of uniform secular civil laws irrespective of their religion, caste, community etc.

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<sup>12</sup> Durga Bas Basu, *Introduction to The Constitution of India* (Gurgaon: Lexis Nexis, 2019) 133.

The Uniform Civil Code is a proposed law laying focus on formulation and enforcement of a set of personal laws which will apply equally to all citizens, regardless of their religion. This implies that all individuals, irrespective of their religious beliefs, would be subject to a uniform civil code that covers various areas such as marriage, divorce, maintenance, inheritance, adoption and succession of property.<sup>13</sup>

## 7. JUDICIAL APPROACH TOWARDS UNIFORM CIVIL CODE

The Supreme Court has also advocated support for Uniform Civil Code through various cases.

In **Mohd. Ahmed Khan v. Shah Bano Begum**<sup>14</sup>, the Supreme Court ruled that Muslim husband is liable to pay maintenance to divorced wife beyond iddat period. The Supreme Court stressed on a common civil code, which will promote national integration by removing inequalities in law that have conflicting viewpoints.

In **Sarla Mudgal vs. Union of India**<sup>15</sup>, the issue of bigamy was brought forward and disagreement on matters of marriage under the existing personal laws. The court emphasised the need of uniform civil code so that the misuse of personal laws can be removed.

In **Danial Latifi & Anr vs Union of India**<sup>16</sup>, the apex court interpreted the Women (Protection of Rights on Divorce) Act, 1986, and held that the divorced woman has right to fair and reasonable maintenance. The need for the uniform civil code was felt to ensure that gender disparity is removed.

In **Shayara Bano Begum Vs. Union of India**<sup>17</sup>, triple talaq was declared unconstitutional. This was also a step forward towards gender equality. This judgment was also an eye opener for bringing reform in personal laws that are discriminatory against women and the need for uniform civil code.

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<sup>13</sup> Esha Suraj Sanas, 'Uniform Civil Code(UCC) and the Personal Laws' (Lawyered, March 22,2023)<<https://www.lawyered.in/legal-disrupt/articles/uniform-civil-code-ucc-and-personal-laws/>>accessed on 13.02.2025.

<sup>14</sup> Mohd. Ahmed Khan v. Shah Bano Begum (1985) AIR 1985 SC 945.

<sup>15</sup> Sarla Mudgal vs. Union of India 1995 AIR 1531.

<sup>16</sup> Danial Latifi & Anr vs Union of India (2001) AIR 2001 SUPREME COURT 3958.

<sup>17</sup> Shayara Bano Begum Vs. Union of India (2017) AIR 2017 SUPREME COURT 4609.



In **Joseph Shine Vs. Union of India**<sup>18</sup>, the Section 497 of the Indian Penal Code was struck down. Section 497 criminalises the adultery. It was considered as discriminatory as it punishes only men and was against the gender equality.

Further, the 21<sup>st</sup> Law Commission report examined subject of Uniform Civil Code held that Uniform Civil Code was “neither necessary nor desirable at this stage” in its consultation paper whereas the 22<sup>nd</sup> Law Commission asked the views of religious organizations and public on Uniform Civil Code.<sup>19</sup>

Also, with people of diverse religions living together instead of bringing a Uniform Civil Code we should try to find out the necessary lacunas in different personal laws and legislature through its various enactments should try to bring out reforms in the personal laws as it will help to maintain unity in diversity and people’s sentiments attached to their religion would not be hurt.

Uttarakhand is the first state of India which has enforced Uniform Civil Code on Jan 27, 2025

## **8. DEBATE OVER UNIFORM CIVIL CODE AND PERSONAL LAWS**

There has been a constant tiff between uniform civil code and personal laws. The supporters of the uniform civil code often argue that by bringing Uniform Civil Code the loopholes in various personal laws can be eradicated by a single law that will be applicable to all the people irrespective of their religion.

But the contentions of the opponents are that by bringing a Uniform Civil Code the religious sentiments of people will be attacked. This will be amount to a direct attack to the Secularism which is considered as the Basic Structure of our constitution.

Proponents of a uniform civil code often argue that it will promote equality and justice, on the other hand the opponents fear that it may lead to the erosion of minority rights and cultural diversity. To strike balance between Articles 25-28 and Article 44 of the Constitution should be main focus while implementing the Uniform Civil Code so as to ensure sure that

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<sup>18</sup> Joseph Shine Vs. Union of India (2018) AIR 2018 SUPREME COURT 4898.

<sup>19</sup> Utkarsh Mishra, ‘Uniform Civil Code: What Centre told SC last year’ <<https://www.rediff.com/news/report/uniform-civil-code-what-centre-told-sc-last-year/20230615.htm>> accessed on 14.02.2025.

this procedure is not merely a political trick but rather the product of thoughtful intellectual deliberation on how to achieve harmonious governance. The demand for a Uniform Civil Code shouldn't be a political farce or based on the emotional debates of the majority or minority groups. Rather, it must be examined with intellectual effort and careful deliberation.<sup>20</sup>

## 9. PROS OF UNIFORM CIVIL CODE

- **Gender Empowerment:** A Uniform Civil Code will help to ensure that gender equality is retained in the country. Often it has been seen that various personal laws are discriminatory towards woman in one or another sense. By bringing a Uniform Civil Code the discriminatory policies towards the man and woman can be eradicated. A Uniform Civil Code will be a step towards the gender equality.
- **Sense of Unity:** A Uniform Civil Code will foster the feeling of togetherness among the people belonging to different religions and will help to build the unity among the people. It will help to foster national integration and will bind the people through sense of oneness and belongingness towards each other and will promote unity among the people.
- **Equality:** A Uniform Civil Code will help to ensure equality by removing the disparities lying in different personal laws. It will help to ensure that equal treatment is given to the citizens irrespective of the religion, caste they belong.
- **Secularism:** A Uniform Civil Code will help to implement the concept of secularism. The concept of secularism prospers the idea that state should not have any religion. The Uniform Civil Code is also based on idea of not advocating any particular religion, instead focuses on a uniform and non-partial law for the citizens irrespective of the religion, caste and community. So, the concept of the Uniform Civil Code will help to upheld the secular nature of the country.
- **Simplified Legal Process:** At present people are governed by there personal laws which is a complex process. Having a single law governing the personal matters would simplify the legal process. A single law governing the personal matters would help to resolve the

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<sup>20</sup> Aravindan Anandan, 'Equilibrium Between Articles 25-28 and 44: The Imperative for a Uniform Civil Code' (Wire 1 August, 2023) <<https://thewire.in/law/equilibrium-between-religious-freedom-and-ucc-dpsp>> accessed on 13.02.2025.

complicated procedure involved and would help to have a smooth judicial proceeding and quick access to the justice.

- **Reform:** A Uniform Civil Code will help to bring reform in the present discriminatory laws governing the personal matters. It will help to bring a progressive and structured society based on equality and justice.

## 10. CONS OF UNIFORM CIVIL CODE

- **Freedom of Religion:** The Constitution of India guarantees Freedom of religion as a fundamental right through Article 25-28 of the Constitution of India. The right to freedom of religion imparts an individual to profess, propagate their religion. Personal laws are intermingled with the religious beliefs of the people. So, bringing a uniform civil code will be considered a direct attack on freedom of religion. It will amount to infringement of the fundamental right of an individual. This has been raised even by the opponents of the uniform civil code.
- **Sense of Insecurity:** The Uniform Civil Code also creates a sense of insecurity among the people belonging towards different religion. The personal laws are often connected with religious beliefs of an individual. The Uniform Civil Code creates a sense of insecurity among the people as they often belief that the uniform civil code will amount a direct attack on their religion and the Uniform Civil Code will detach them from their religion.
- **Diverse religion:** India is a home to people having diverse religions. Being a secular state there is no religion of the state but having such diversity in religion is a complicated issue for the framing of uniform civil code. Staunch religious leaders feel the uniform civil code as attack on there religion. The uniform civil code can be seen as an attack on the religion diversity of India.
- **Loss of identity:** Uniform Civil Code also creates an apprehension of loss of identity to people belonging to diverse religion. The implantation of uniform civil code could be perceived by the people as an attack on there religious beliefs and they might consider that the process of uniform civil code can erode their identity.

- **Legal Complications:** It is very easy to say that the uniform civil code will make the legal process easy but to make a single comprehensive law serving the needs of people belonging to diverse religion is a very lengthy and cumbersome task. It is pertinent to note that the law framed should not in any way discourage or hurt the religious feelings of any community. The framing of uniform civil code requires a lot of time and is a deliberative and consultative process.
- **Implementation related issues:** It is easy to say to bring a uniform civil code but to bring it in reality is a very tough and cumbersome task. The implementation of the uniform civil code has very practical problems. It is very difficult to bring a single law that could serve the needs of different religion. The people also need to be educated on the concept of uniform civil code so that they did not hesitate on adapting changes. So, it can be said that on ground work it is a very comprehensive issue to legislate a single law that would cater the needs of people belonging to diverse religions and also the implantation of the same is a very tough task as people often hesitate to adapt changes and particularly when it relates to their religious beliefs.

## 11. NEED FOR BALANCE

To obtain equilibrium between Uniform Civil Code and personal laws is the striking need of the hour. To bring a Uniform Code at one go is a very tough task. India being a land of diverse culture is a home to people having diverse religions living together. Since long time people are being governed by their own personal laws and religion is a very sensitive issue. To bring a single law governing people in relation to their personal laws can be a cause of conflicts. The main goal should be to strike a balance between both. The focus should be to bring reforms in the laws governing the personal matters so that the problems related to disparities in various personal laws is resolved.

Achieving balance between the uniform civil code and the personal laws will ensure that legal reforms do not lead to an attack on the religious beliefs of any community and no community feels that their beliefs have been displaced or suppressed. A balanced approach would help to ensure that the gender justice is ensured.

The equilibrium between the uniform civil code and personal laws is important for fostering national integration and to achieve secular state.

## **12. CONCLUSION**

It can be concluded that the focus should be on creating equilibrium between personal laws and uniform civil code. The primary focus for now should be on reformation of personal laws so that progressive and advanced society can be formed. The Uniform Civil Code should be framed in such a way that the diverse religions are given the equal respect. There should be no feeling of enmity left between the people belonging to diverse religions. Slowly and Gradually steps should be taken to bring a uniform civil code. The process should begin with bringing reforms in the personal laws. The masses should be made aware and educated about the concept of Uniform Civil Code so that they can build up their minds to have a uniform law of land for the personal matters.