
BALANCING LEGAL PLURALISM AND CONSTITUTIONAL EQUALITY: EXAMINING PERSONAL LAWS AND THE QUEST FOR A PROGRESSIVE UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

It is the study of the intricate relationship between personal laws and the Uniform Civil Code (UCC) in India, centered around the difficulty of balancing legal pluralism with constitutional ideals of equality and justice. Personal laws in India, bearing the hallmark of religion, dictate matters affecting very personal areas such as marriage, divorce, inheritance, and adoption, thus creating disparities and perceived inequalities amongst various communities. Various divergent issues have cropped up as implementation of the UCC envisaged by Article 44 of the Constitution would replace these sundry laws that have come into being through socio-political, cultural, legal, and other challenges.

Tracing the origin of personal laws and the constitutional scheme for a UCC, this study examines contradictions within existing personal laws across major religions and their ramifications on gender justice and equality. It explores the likely implications of uniformity by also studying models such as the Goa civil Code and the abolition of the Hindu United Family in Kerala. To keep the study relevant, contemporary issues of same-sex marriage and gender-neutral provisions are carried into the picture to reinforce why the time has come for a contemporary, inclusive UCC.

Through doctrinal analytical writing, comparative research, and empirical analysis, the study proposes a framework toward a progressive and balanced UCC emphasizing inclusivity, phased implementation, and dialogue among stakeholders that endeavor to ensure that the UCC stays true to India's pluralistic traditions while upholding constitutional values. The research works toward enriching the ongoing debate by proposing constructive recommendations on how to develop a UCC that guarantees diversity with equality and justice.

Keywords: Uniform Civil Code, personal laws, legal pluralism, constitutional equality, gender justice.

INTRODUCTION

India, being so diverse and pluralistic, has long battled with the simultaneous existence of religious personal laws concerning marriage, divorce, inheritance, and adoption. These laws are grounded in faith traditions and, at times, could lead to legal discrimination and perceived injustices, particularly in the gender context; hence, there are calls for the Uniform Civil Code (UCC) envisaged under Article 44 of the Indian Constitution to unify these fragmented laws so that justice and equality are realized by all citizens.

The very mention of UCC sends shivers down the necks of groups, both religious and cultural, who perceive it as interfering with their personal beliefs and practices. According to some of the critics, a term like uniformity may never translate into equality in a country as diverse as India. Furthermore, civil codes, such as in the case of Goa and the discontinuance of the Hindu Undivided Family (HUF) system by Kerala, already give a glimpse as to how certain are the hurdles and how intricate the task will be to continue to an inclusive and progressive UCC. In this context, the imperative arising from the situation is contemplating whether a UCC could reconcile pluralist theories with the constitutional mandate for equality. This study examines the complex interaction flowing between personal laws and the proposed UCC, whether the laws interfere with fundamental rights, and whether a uniform scheme promotes justice at the cost of cultural diversity.

Research Question

- Can the Uniform Civil Code reconcile India's legal pluralism with constitutional ideals of equality and justice while respecting its cultural and religious diversity?
- How can a progressive UCC address emerging legal issues, such as same-sex marriages, gender-neutral provisions, and the abolition of discriminatory practices like the Hindu Undivided Family system?

Conceptual Framework

The Uniform Civil Code (UCC) is a mooted legal code in India that seeks to override the myriad personal laws that govern marriage, divorce, succession, adoption, and other family issues with one, uniform set of laws that are applicable to every citizen, regardless of religion.

The idea has its genesis in the Indian Constitution, which is part of the Directive Principles of State Policy. It reads:

"The State shall make an endeavor to ensure for the citizens a uniform civil code in the whole of India¹."

Although Directive Principles are not legally enforceable, they serve as a guidance for governance by stressing the imperative of social and legal changes in order to realize constitutional ideals of equality and justice.

Legal Pluralism and India's Religious Diversity

Legal pluralism is the existence of several legal systems in a single jurisdiction, in such a way that diverse communities can be regulated by laws of their respective faiths. In India, it expresses itself as religious personal laws that govern important areas of family life for Hindus, Muslims, Christians, Parsis, and other groups. India's legal pluralism is an expression of its religious and cultural diversity, constitutionalized under the constitution that ensures freedom of religion². The personal laws provide communities with the opportunity to retain their unique practices and traditions and thereby a sense of identity and self-governance. Nevertheless, this pluralism has resulted in inconsistencies and perceived inequalities within the legal framework, especially concerning gender rights and distribution of property.

Personal laws in India also have the vital function of governing the personal and family matters of people based on their respective religious or cultural practices. Personal laws cover important topics like marriage, divorce, succession, adoption, and guardianship. The personal law system is a reflection of India's diverse religious mosaic, where every religious community, including Hindus, Muslims, Christians and others, possesses its own rules and regulations and customs applicable in family and personal matters. These are derived from religious scriptures, usage and tradition, and vary quite distinctively from community to community.

Indian marriage laws are regulated by certain personal laws on the basis of religion. For Hindus, the Hindu Marriage Act of 1955³ stipulates the legal code for marriage and its annulment by divorce. The Act makes provisions for monogamy, the sacredness of marriage, and legal

¹ Government of India. (1950). *Constitution of India*. Article 44.

² Government of India. (1950). *Constitution of India*. Article 25.

³ Act No. 25 of 1955, INDIA CODE (1955).

reasons for divorce such as cruelty, adultery, and desertion. Conversely, Muslim personal law permits polygamy, which allows Muslim men to marry a maximum of four women, something that is forbidden under Hindu law. In addition, Muslim law permits unilateral divorce by means of the Talaq system, which involves the husband divorcing the wife by uttering the name "Talaq" thrice, a provision that has been contentious and in need of reform, as exemplified by the Triple Talaq Act (2019), which criminalized instant divorce.

Christian laws also make provisions for marriage and divorce under the Indian Christian Marriage Act⁴ and the Divorce Act⁵. The laws permit the cancellation of marriages and the grounds for divorce, including adultery, cruelty, and desertion, but vary in the procedure and formalities from the laws prescribed for Hindus and Muslims. The marriage and divorce provisions under personal laws mirror the religious and social beliefs of every community but tend to result in unequal treatment of men and women, particularly in the context of polygamy and divorce rights.

Inheritance rules under personal laws vary extensively between religions, resulting in huge differences, especially in the rights of women. In Hindu law, the Hindu Succession Act⁶ regulates the division of property at death. Hindu daughters were not entitled to inherit property on an equal footing with sons. But the 2005 amendment to the Hindu Succession Act gave daughters equal rights of inheritance in ancestral property, although the law remains challenging to implement, particularly in the distribution of property in joint families.

Muslim inheritance law, on the other hand, is governed by the Quran and Sharia, which mandate fixed shares for male and female heirs. Male heirs usually inherit more than female heirs, but this is based on religious texts where there are religious dicta for specific portions of inheritance. For instance, a son inherits double the amount of a daughter. The laws of inheritance follow in Christianity by the Indian Succession Act⁷, where inheritance is distributed equally among the legal heirs, including sons and daughters. But there are deviations based on the practices of their communities and kinship structures that tend to conflict over property entitlements.

⁴ Act. No. 15 of 1872, INDIA CODE (1872).

⁵ Act. No. 4 of 1869, INDIA CODE (1869)

⁶ Act. No. 30 of 1956, INDIA CODE (1956).

⁷ Act, No. 39 of 1925, INDIA CODE (1925).

The inequalities in the laws of inheritance have been a contentious issue, mostly the issue of gender equality. Though attempts at reform have been made to eliminate such inequalities in the laws, like extending equal rights to property under Hindu law to daughters as well, the gendered inequality in succession still remains an issue in many instances, especially in Muslim law where the unequal division of inheritance between a male and a female heir still continues.

Adoption laws too differ considerably from person to person. In Hindu law, formal adoption is provided under the Hindu Adoption and Maintenance Act⁸, wherein Hindus can adopt children of any gender. The adoption must be formal and the child will be a part of the family of adoption as if born from them. In Muslim personal law, formal adoption is not acceptable in the same manner. Muslims are urged to offer care to orphaned children but cannot legally adopt them like Hindus. The Kafala practice, where a Muslim family assumes guardianship of a child's welfare without legal formal adoption, is prevalent but has no legal sanction under Indian law. For Hindus, the Hindu Minority and Guardianship Act⁹ regulates child custody, awarding the father automatic rights of guardianship, but with the provision that the mother is the natural guardian for minor children below five years of age. Muslim law, meanwhile, traditionally gives mothers guardianship of children through their early age, but above a certain threshold, the guardian can be conferred on the father. The uniformity of provisions in these clauses can result in inconsistent results, especially in matters of divorce and separation.

Personal laws, while acting as an instrument of the preservation of religion and culture, tend to strengthen discrimination, notably against women. Laws such as Muslim law allowing polygamy, Saptapadi¹⁰ under Hindu law for marriage, whereby the taking of seven steps by a man around his bride alone makes their union valid, and failure to accord validity to homosexual marriages under any of the personal laws cause gender inequality and marginalized status of a section of population. The Hindu Undivided Family (HUF) system, criticized for its unequal treatment of women, is a case in point on how personal laws can cause unequal treatment.

In the past, many reforms have been suggested and made to correct these inequalities. For example, in 2005, the Hindu Succession Act was amended to give daughters the same rights to

⁸ Act. No. 78 of 1956, INDIA CODE (1956).

⁹ Act, No. 32 of 1956, INDIA CODE (1956).

¹⁰ Act No. 25 of 1955, Sec.7, INDIA CODE (1955).

inheritance as their brothers, and the Triple Talaq Act of 2019 criminalized instant divorce. Still, much needs to be done to balance these laws to bring gender equality and safeguard personal rights.

Overall, India's personal laws function to govern key areas of family life but tend to produce uneven and discriminatory treatment between religious communities, especially on the issue of gender. Though the laws help maintain religious customs and practices, they do not always correspond with the constitutional ideals of equality and justice. Reform of personal laws to provide for gender-neutral, progressive, and harmonized standards that protect the rights of all citizens, regardless of religion or gender, is critical for a just and equitable legal system in India. The Uniform Civil Code (UCC) debate is at the forefront of this discussion, attempting to substitute diversified personal laws with one singular code that ensures equal rights and protection to every citizen.

Comparative Analysis of Uniform Civil Code Models.

The idea of a Uniform Civil Code (UCC) in India is frequently controversial because it has the potential to supplant the various personal laws that regulate different religious communities. India's legal pluralism, which permits different religious groups to adhere to their respective personal laws, has led to a patchwork legal system that generates disparities and inequalities. The idea of a UCC is to form one, comprehensive set of laws that will bind all citizens with the same effect, regardless of their religion. In doing so, it is ensured that all constitutional values are maintained in regard to equality and justice. Some existing models of uniformity in India and overseas are very insightful for the realization of such a code in India.

1. Goa's Civil Code

Goa is a case of an Indian state that has introduced a type of Uniform Civil Code. The Goa Civil Code, enacted in 1867 during the Portuguese regime, still regulates issues like marriage, divorce, inheritance, and adoption in Goa even after it became part of India in 1961. The Goa Civil Code is one of the few efforts to create a uniform body of civil laws applicable to all citizens of the state irrespective of religion.

The Goa Civil Code is a notable instance of uniformity in India, establishing an integrated legal code for Hindus and non-Hindus alike, particularly in issues of marriage, inheritance, and

adoption. It requires monogamy from both men and women, as opposed to certain personal laws applicable to Hindus and Muslims permitting polygamy. The Code also provides equal inheritance rights to both men and women, a radical departure from most personal laws where male heirs are privileged, especially in Muslim and Hindu law of inheritance. The law also does not discriminate between religious communities when it comes to adoption, providing a clear, uniform system for everyone. Even with these developments, the Goa Civil Code has been criticized, especially by religious groups that believe that it does not consider their religious and cultural practices at all. For instance, certain Hindu inheritance traditions are not in line with those set under the Code, and concerns regarding the loss of religious identity have been raised. Although Goa's Civil Code has had impressive success in ensuring gender equality and equal rights, its model is hard to replicate in India's complex society, where religious and cultural identities play a huge role in shaping personal law¹¹.

2. Kerala's Abolition of the Hindu Undivided Family (HUF) System.

In 1975, Kerala enacted an important legal reform with the enactment of the Kerala Joint Hindu Family System (Abolition) Act¹², abolishing the Hindu Undivided Family system in the state. The HUF system, which existed exclusively in Hindu law, made it possible for joint families to club resources and be treated as a combined legal entity for tax assessment. But this system had the result of tax evasion, with families utilizing it as a tool to save taxes, which caused a heavy loss of revenue to the state. Seeing the problem in this, Kerala's government chose to eliminate the HUF system, following the idea of economic justice and making sure that tax benefits were not exploited. Another key reason behind this reform was that it emphasized gender equality. The HUF system was traditionally discriminatory, as women were not part of its economic and legal privileges. Although a 2005 amendment made it possible for women to be coparceners (co-heirs), the system was still fundamentally patriarchal. By eliminating the HUF, Kerala made sure that women could no longer be left out of these rights, and a more equal social and economic framework was encouraged. Though this reform was generally acclaimed for its progressive character, its implementation has so far been confined to Kerala, and the wider application of a similar reform across India would need enormous political and social acceptance. The reform has triggered opposition from cultural and religious groups who

¹¹ Kratee Aggarwal & Sunidhi Agrahari, *The Goan Civil Code: A Great Success or A Steep Failure?*, 2 INT'L J. ADV. LEGAL RES. 103 (2022), available at <https://ijalr.in/volume-2/issue-3-2/the-goan-civil-code-a-great-success-or-a-steep-failureby-kratee-aggarwal-sunidhi-agrahari/>.

¹² Act, No. 30 of 1976, KERALA LEGIS. ASSEMBLY (1976).

stood to gain by the HUF system, evidencing the scope for enormous opposition to comparable nationwide reforms.

Emerging Legal Issues

With the changing social values, concerns regarding the legalization of gay marriage and the protection of LGBTQ+ rights have become essential parts of the ongoing discourse related to the Uniform Civil Code (UCC). The increasing acceptance of sexually diverse and gender-diverse populations calls for the dismantling of conventional systems of personal laws, which do not acknowledge or provide space for LGBTQ+ individuals. In India, the lack of legal protection for same-sex marriages poses substantial challenges to LGBTQ+ couples, from inheritance rights to adoption. While the decriminalization of Section 377 by the Supreme Court in 2018 was a major leap, it did much to leave gaping holes in terms of marriage and adoption rights. A UCC can bridge these loopholes by providing a legal code that guarantees equal rights to everyone regardless of their sexual orientation or gender identity. Through provisions for same-sex marriage, adoption, and inheritance, a liberal UCC would not only ensure constitutional equality but also make LGBTQ+ rights equivalent to those of heterosexual people. This would be a major step towards creating a more inclusive society in which all citizens enjoy the same legal rights and opportunities.

Indian legal reforms are necessary to the extent that they ensure that the existing personal laws are in accordance with the ideals of the Indian Constitution, and most importantly, equality, justice, and non-discrimination. The existing personal laws promote gender discrimination, religious disparities, and traditional practices, which are against the ideals put forward by the Indian Constitution. These personal laws, as regulated by religious practices, do not usually safeguard the rights of marginalized groups like women, children, and the LGBTQ+ community. A reform of the personal laws becomes imperative to align them with the constitutional provisions of equality before the law and the protection of basic rights so that all citizens, whether by religion or gender, are treated equally under the law.

One means to facilitate the process of introducing a Uniform Civil Code (UCC) is by following a phased or optional process. This will enable various communities or states to adopt the UCC on their own time, slowly phasing it into their legal frameworks. This could soften the opposition commonly faced in the imposition of a uniform code over a heterogeneous country like India. By providing communities with a choice between adopting their own personal laws

or the UCC, it would foster inclusiveness with a more liberal route to legal unification. As the years pass and as the social acceptability of an enlightened UCC increases, increasing numbers of territories will voluntarily incorporate the code in a manner that is both democratic and sensitive to India's religious and cultural plurality. This incremental and gradual method would most probably create more cooperation and tolerance, enabling the move towards a single legal system that promotes constitutional values.

Conclusion

In summary, the Uniform Civil Code (UCC) is imperative to bring about equality, justice, and gender equality among all segments of society. Though India's cultural and religious diversity calls for being sensitive to its tradition, the UCC seeks to establish a homogeneous legal code to provide equal rights and safeguards to all citizens, regardless of their individual faith or community to which they belong. The UCC is not a matter of erasing religious or cultural identities, but one of ensuring that persons, particularly marginalized groups such as women, children, and LGBTQ+ individuals, are equal before the law. It attempts to harmonize the legal framework, closing gaps between personal laws and constitutional values of non-discrimination and basic rights.

The path forward entails a multi-phased and inclusive mode of enacting the UCC, one that does not forget India's diverse society but proceeds towards better legal reforms. It is imperative to bridge the changing needs of society in terms of legalizing same-sex marriage, gender equality, and LGBTQ+ rights, all of which need to be integrated into one comprehensive legal framework.

Actionable suggestions for progressive and inclusive legal reforms are:

1. **Reform of Personal Laws:** Reform old personal laws to remove gender discrimination and inequality. This may include amending laws on marriage, inheritance, and adoption, with a focus on gender-neutral provisions and inclusive practices.
2. **Recognition of LGBTQ+ Rights:** Legalize same-sex marriage and extend equal rights to LGBTQ+ couples in matters like inheritance, adoption, and taxation, ensuring their protection under the UCC.
3. **Gradual Implementation:** Implement the UCC in stages, giving voluntary adoption

opportunities to communities and states, such that the change is done with least resistance and greatest inclusiveness.

4. **Public Awareness and Dialogue:** Launch a national dialogue to build awareness of the significance of the UCC and its ability to promote social justice and gender equality, addressing cultural and religious preservation concerns.
5. **Legislative Reforms for Gender Equality:** Enhance the legal safeguards for women in such matters as divorce, inheritance, and reproductive rights so that they are not denied equal treatment under personal laws.

In working towards these reforms, India can inch closer to a more progressive, inclusive legal framework that honors cultural diversity without compromising the equality of all citizens in enjoying the fundamental rights and freedoms enshrined in the Constitution.