

---

## IS THE UNIFORM CIVIL CODE TRULY SECULAR?

---

Priyanka Giri & Kopal Bhatnagar, Chanakya National Law University, Patna

### ABSTRACT

India is home to a variety of religions and cultures and celebrates its diverse culture with joy and pride. However, she is facing a conundrum-how to balance secularism with diverse personal laws governing marriage, inheritance, and adoption. This paper explores the debate surrounding the UCC, a proposed single set of civil laws for all citizens. Proponents argue the UCC promotes national unity and gender equality, while critics fear it undermines religious freedom and cultural identity.

The article analyzes the concept of secularism and its compatibility with a UCC. It examines the recent implementation of the UCC in Uttarakhand, highlighting both its strengths, like gender-neutral inheritance, and weaknesses, such as unnecessary registration procedures. Finally, the paper proposes a framework for a more inclusive UCC that respects religious sentiments while achieving gender justice.

**Keywords:** Uniform Civil Code (UCC), Secularism, Religious Freedom, Gender Equality, India.

## INTRODUCTION

India, the world's largest democracy, prides itself on its rich tapestry of cultures and religions. This very diversity, however, presents a unique challenge in the realm of personal laws. Currently, various religious communities in India follow their own set of personal laws governing matters like marriage, divorce, inheritance, and adoption. This system, while respecting traditions, raises questions about equality and secularism. The concept of a Uniform Civil Code (UCC), a single set of civil laws applicable to all citizens irrespective of religion has been a topic of national debate for decades. Proponents argue that the UCC would promote national unity and gender equality, while critics fear it could undermine religious freedom and cultural identity.

At the heart of this debate lies a fundamental question: is the UCC truly a secular ideal? On the surface, a uniform code that treats all citizens equally seems to embody the principle of secularism enshrined in the Indian Constitution. However, the issue is more nuanced. Does secularism simply imply equal treatment under the law, or does it also encompass the freedom to practice one's religion, even in personal matters?

Opponents of the UCC argue that religious laws are integral to a community's faith and cultural identity. They point out that the current system, while creating some disparities, allows religious communities to maintain their unique traditions. For instance, some argue that the UCC could potentially dilute practices like inheritance rights within Muslim communities.

Proponents, on the other hand, counter that the current system creates inequalities, particularly for women. They argue that certain religious personal laws are outdated and can be discriminatory, especially towards women. For example, Hindu women have more progressive rights in inheritance compared to Muslim women governed by Sharia law.

The debate around the UCC goes beyond just religious practices. Some argue that a uniform code would foster national integration and a stronger sense of Indian citizenship. They believe that a common set of laws would transcend religious affiliations and promote a more unified national identity. Conversely, critics fear that the UCC could be seen as an imposition on minority communities, potentially leading to social tension.

Finding a solution that balances the ideals of secularism with respect for religious freedom

remains a challenge. Whether the UCC can truly be considered a secular ideal hinge on how it is implemented. A sensitive approach that acknowledges the importance of cultural identity while ensuring equality for all citizens is crucial. Open dialogue and a commitment to finding common ground will be essential to navigate this complex issue.

## ARGUMENTS IN FAVOUR OF UCC

The proponents of the UCC rely heavily on the fact that the origin of UCC can be traced back to the constitution. The current regime has been vocal about the implementation of the UCC and strongly advocates the roots of the UCC embedded in the constitution.

Article 44 of the Indian Constitution mandates the government to strive and make endeavours to secure for the citizens a uniform civil code throughout the territory of India<sup>1</sup>. The founding fathers of our constitution, whose vision constitutes the core of our nation, themselves entrusted the government to make efforts in furtherance of a uniform civil code.

Revisiting the statement of the Father of the Constitution becomes important amidst the ongoing controversy surrounding the desirability and effectiveness of a uniform civil code. Dr. B. R. Ambedkar in the constitutional debate, asserted that “UCC is desirable but, for the moment, it should remain voluntary”. Subsequently, Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in Part IV of the Constitution of India as Article 44<sup>2</sup>.

There has been a prominent misconceived notion that the DPSP of the Constitution is toothless and has no binding force over the government, despite its value being reaffirmed by the Apex Court over and over again. In the landmark judgement of *Keshvanand Bharti*<sup>3</sup>, the Supreme Court held the DPSP to be fundamental to the governance of a nation, even though it is not enforceable in the court of law, due credence has to be given to it by the government.

The Indian Judiciary has also appealed to the government to bring the UCC into action through various pronouncements. Some of the most popular ones are discussed here-

---

<sup>1</sup> INDIA CONST. art. 44.

<sup>2</sup> Rimjhim Singh, Uniform Civil Code: What is it and what are the arguments against it?, Business Standard (Jun. 15, 2024, 8:35 PM), [https://www.business-standard.com/india-news/uniform-civil-code-what-is-it-and-what-are-the-arguments-against-it-123061500996\\_1.html](https://www.business-standard.com/india-news/uniform-civil-code-what-is-it-and-what-are-the-arguments-against-it-123061500996_1.html).

<sup>3</sup> *Keshvanand Bharti v. State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461.

1. In *Mohd. Ahmed Khan v. Shah Bano Begum*<sup>4</sup>, the Supreme Court while determining the rights of a Muslim woman to maintenance under CrPC, called for the implementation of the UCC. It was further opined that Article 44, which has been reduced to a “dead letter,” must be revisited by the Parliament.
2. In *Jorden Diengdeh v. S.S. Chopra*<sup>5</sup>, the Supreme Court of India opined that it was time to reform the laws relating to matrimonial affairs including divorce and separation, and implement a Uniform Civil Code for all. The Court also observed that it's high time for legislature to intervene in personal matters and enforce a Uniform Civil Code.
3. In *Sarla Mudgal v. Union of India*<sup>6</sup>, the Apex Court observed that Republic of India is one nation and therefore based on religion, no community could claim to be a separate entity. It throws light on the issue of bigamy and contradicting personal laws, and emphasizes the need to enact a uniform civil code.
4. In *John Vallamattom v. Union of India*,<sup>7</sup> the Supreme Court observed that a Uniform Civil Code should be implemented for national integration.

The proponents of the UCC cite the above authorities as they believe that the introduction of UCC is not an alien concept but rather has been proposed and appealed by the Indian courts for a long time. The Parliament should not ignore the constitutional mandate and the growing need for bringing a common code binding the citizens of the country, irrespective of their religion, caste, and gender. They argue that uniformity would automatically remove the discrimination arising out of multiple personal laws and would ease the complexities.

## ARGUMENTS AGAINST UCC

India is known for its unique and rich cultural heritage. It encompasses several religious groups, sects, and castes which makes it diverse and rich. There is another popular belief that seeking uniformity in the civil code, which is currently present in the form of personal laws, would undermine the diversity of the nation. The proponents of this argument are often skeptical of

---

<sup>4</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 : AIR 1985 SC 945.

<sup>5</sup> *Jorden Diengdeh v. S.S. Chopra*, (1985) 3 SCC 62 : AIR 1985 SC 93

<sup>6</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635 : AIR 1995 SC 1531.

<sup>7</sup> *John Vallamattom v. Union of India*, (2003) 6 SCC 611.

the very intention of the government in bringing these so-called “reforms”.

On the government’s request, the Law Commission in 2018, headed by former Supreme Court judge BS Chauhan submitted a consultation paper on the reform of family law. The statement of the Law Commission gave strong backing to the critics of the UCC and now they refer to this to counter the alleged need and utility of UCC. The Law Commission didn’t concur with the government’s view to bring UCC as it has become necessary and desirable. It stated in the report that UCC “is neither necessary nor desirable at this stage”. They further opined that “cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation.” The report ended with a note to recommend the discriminatory practices, prejudices, and stereotypes within a particular religion and its personal laws should be studied and amended.

The critics of the UCC place their reliance on the constitutional scheme of secularism. They argue that secularism doesn’t mean that the elements of religion and faith should be completely kept at bay. There is a fleeting misconception that secularism means immunity or indifference from all religions and faiths. Secularism rather means treating all religions equally irrespective of the differences in their faith. Secularism does not warrant the removal of all religious practices and overhauling the existing legal system with a new, one-size-fits-all code. The Constitution intends to preserve the diverse cultures and varied faiths of the people which can be easily inferred from the presence of “Right to religious freedom” under Part III.

Article 25 of the constitution guarantees the right to freely practice and propagate their religion<sup>8</sup>. The right of one’s faith has been conferred as a fundamental right enshrined under the Constitution. It shows the intention of our framers to give it the utmost significance, safeguarding it from being scathed due to the whims and fancy of even a State.

Further, the right to manage religious affairs is enshrined under Article 26<sup>9</sup> of the constitution which also aims to preserve the idea of a secular nation envisioned by the founding fathers of our constitution. Any attempt to enforce a UCC would require significant amendments to the Constitution, which could undermine the delicate balance between individual rights and state

---

<sup>8</sup> INDIA CONST. art. 25.

<sup>9</sup> INDIA CONST. art. 26.

intervention<sup>10</sup>.

It is mostly argued by the critics that the implementation of UCC would do more harm than good. Firstly, there is no pressing need for the introduction of UCC, they believe the personal laws are capable of solving problems arising out of it. Secondly, it is not even desirable, as there is no empirical cogent backing to the argument that unifying the personal laws would solve the existing complexities. Thirdly, even if we concede to the fact that the constitution itself mandates the implementation of UCC, the same constitution confers the fundamental right to manage one's religious affairs. Needless to say, in case there happens to be a conflict between Part III and Part IV of the constitution, the Fundamental Rights have to be given primacy over the Directive Principles of State Policy as held by the Hon'ble Supreme Court in *State of Madras v. Champakam Dorai Rajan*<sup>11</sup>.

Lastly, there is a lurking apprehension among the minority groups that in the name of unifying the personal laws, there might be an attempt to impose a 'Hinduised' code for all communities<sup>12</sup>.

## ANALYSIS - UCC IN UTTARAKHAND

One of the best ways to judge the efficacy of a law is to carry on a patch test. The passing of the UCC bill by the Uttarakhand State Legislature can serve this purpose. An analysis of the bill will help us in getting a close look at the legal nuances surrounding this whole debate.

In brief, the bill contains provisions for marriage and divorce in the first part; and provisions for succession, including both testate and intestate, in the second part<sup>13</sup>. The bill has attracted its fair share of applause and criticism which will be dealt with herein.

## STRENGTHS-

It has been argued that the provisions related to succession are one of the positive traits of this bill.

---

<sup>10</sup> Uniform Civil Code EXPLAINER | What is UCC? What does Constitution say about it, Livemint (Jun. 16, 2024, 2:50 PM) <https://www.livemint.com/news/india/uniform-civil-code-explainer-ucc-indian-constitution-directive-principles-hindu-marriage-act-muslim-personal-law-11687924522068.html>.

<sup>11</sup> *State of Madras v. Champakam Dorai Rajan*, AIR 1951 SC 226.

<sup>12</sup> *Supra* note 2.

<sup>13</sup> Justice K. Kannan, Uttarakhand's UCC – Unifying Laws Or Dividing Communities?, Livelaw (March 13, 2024, 2:07 PM) <https://www.livelaw.in/articles/uttarakhand-uniform-civil-code-and-personal-laws-implications-analysis-252125?infinitemscroll=1>.

Firstly, the language of the statute makes no distinction between the male and female heirs. This feels like a breath of fresh air, as the legislature is now moving in the right direction to create a more egalitarian society. Unlike the personal laws, for instance in the Hindu Succession Act, only recently the daughters were given the same status as male coparceners. Similarly in the Muslim personal laws, the women do not stand on the same footing as their male counterparts with regard to succession. Thus, when a statute itself recognizes and confers the rights to women at par with their male counterparts, speaks volumes about the progressive approach of the legislature.

Secondly, the bill does away with the confusion and multiplicities of provisions regarding the successive rights of the parents (father and mother) in their children's estate.

Under the Hindu Succession Act, a mother is the class-I heir of a male deceased keeping the father in the list of class-II heir, which means that both the parents are not on the same pedestal while claiming the property of their son. In Muslim law, both the mother and father of a deceased Muslim are considered primary heirs and receive a 1/6<sup>th</sup> share each. The UCC bill brings a new provision and states that if either parent dies, the surviving spouse will inherit the undivided half and not the others<sup>14</sup>.

### **SHORTFALLS-**

The shortcomings or rather not-so-impressive points of this bill are mostly provisions dealing with Custody (Guardianship) and Divorce.

#### **1. Custody-**

It has been argued that the chapter dealing with custody of minor children under this bill is identical to the law governing guardianship to Hindus under the Hindu Minority & Guardianship Act. In *Githa Hariharan v Reserve Bank of India*<sup>15</sup>, the Apex Court held "that a mother shall not be understood as falling in inferior status as a natural guardian after the death of the father for the child under Sec 6 of the Act but must be understood as entitled to the guardianship 'in the absence' of the father could have found a legislative induction through this

---

<sup>14</sup> *Ibid.*

<sup>15</sup> *Githa Hariharan v Reserve Bank of India*, 1999 (2) SCC 228.

law". The interpretation given to the Act in this case has been incorporated in the bill without any major changes.

## **2. Divorce-**

The bill stipulates an additional requirement to register the divorce along with the registration of marriage. It expects the divorced parties to legalize the process by not only obtaining the decree from the court of law but registering it as well. This has been the major bone of contention among the critics as they argue that this stipulation, in fact, serves no valuable purpose. No good can be achieved by registering the divorce decree which is already a part of the official document with the court of law. This requirement is cumbersome and would add to the financial burden on the parties without any cogent reason. This provision is completely unnecessary and wasteful.

## **SUGGESTIONS**

Having said the flip side of the bill, it would be inappropriate to leave the problems hanging without addressing the issues. Mere complaints without furnishing plausible solutions to a problem are no better than a mindless critique. So, here are some caveats to be kept in mind while implementing the uniform civil code in other states.

### **1. Widespread Consultation-**

Involve religious leaders, legal experts, scholars, and minority communities to ensure the UCC respects traditions while promoting equality. The legislature should take the views of all the stakeholders into account and not merely the majority community.

### **2. Gradual Approach-**

The UCC can be introduced progressively, prioritising core principles like gender justice. There is no need to rush the implementation of the UCC throughout the nation. This would also ensure a sense of trust and respite among the apprehended sections of the society.

### **3. Focus on Gender Equality-**

It has to be ensured that UCC eliminates discriminatory practices in areas like inheritance and divorce, promoting equal rights for women. The reform must not be merely for the sake



of uniformity but to establish a just system.

#### **4. Public Education and Awareness-**

The public must be educated about UCC's benefits and its aim to strengthen national unity while respecting religious freedom. This has to be essentially communicated to the different religious groups that this is clearly not an attempt to infringe on their rights nor is neglecting their religious autonomy but for the greater good and fairness.

#### **5. Model Code Based on Existing Laws-**

Consider the UCC as a framework built upon successful aspects of existing personal laws across religions. It would be much easier and more rational to adopt the progressive practices of the different personal laws to blend them to create a framework that is suitable for all.

#### **6. Respect for Religious Sentiments-**

The UCC should accommodate essential religious practices while addressing discriminatory aspects of personal laws.

By following these suggestions, India can strive for a UCC that promotes national unity, social justice, and equal rights for all citizens.

### **CONCLUSION**

The debate surrounding the Uniform Civil Code (UCC) in India hinges on a fundamental question: can a uniform set of laws truly be considered secular? While the concept of equal treatment under the law aligns with secular principles, the issue is more nuanced. Does secularism solely imply legal equality or does it encompass the freedom to practice one's religion, even in personal matters?

Proponents of the UCC argue that the current system, with diverse personal laws for various religions, creates inequalities, particularly for women. They advocate for a UCC that promotes gender justice and national unity. However, critics raise concerns that the UCC could undermine religious freedom and cultural identity, particularly for minority communities.

The recent implementation of the UCC in Uttarakhand provides a valuable case study. While the bill includes positive aspects like gender-neutral inheritance rights, it also has shortcomings, such as the redundant registration of divorce decrees.

Finding a solution that balances secular ideals with respect for religious freedom remains a challenge. A scheme of Widespread Consultation involving religious leaders, legal experts, and minority communities is necessary to ensure that the UCC respects traditions while promoting equality and accommodates essential religious practices while addressing discriminatory aspects of personal laws. The UCC should be implemented in a phased manner, while educating the public about the merits and objectives of this code. Further, considering UCC as a model code, a framework can be built, accumulating successful aspects of existing personal laws across religions. Therefore, the UCC can be truly secular if it is implemented with sensitivity, acknowledging the importance of cultural identity while ensuring equality for all.

In a nutshell, the observation is that the UCC which is proposed to be implemented can be secular if while drafting the code it is intended not to break the secular fabric. There is a pressing need to look into the legal nuances and societal needs instead of political considerations. A balanced and meticulous approach is expected from the lawmakers.