
THE UCC'S IMPACT ON THE CONFLICT BETWEEN PERSONAL LAWS AND FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION

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ABSTRACT

India is the most diverse country in the world, such a diverse nation has different codes and personal laws for people from different communities on personal matters relating to marriage, divorce, succession, etc. Article 44 of the Indian constitution which is a Directive Principle of State Policy speaks about the Uniform Civil Code (UCC). It says that there should be a uniform code for all people irrespective of their community, however, articles 25 and 26 speak about the rights to freedom of religion and are fundamental rights that are contradicting Article 44 of the same legislation. This paper using a doctrinal methodology of study aims to find the impact of implementing UCC on personal laws and fundamental rights. The paper also analyses UCC's historical perspective and the reason behind enacting Article 44. The constituent assembly debates and Supreme Court decisions cases are also analyzed in this paper. The paper concludes by addressing the issues relating to the implementation of UCC and the advantages and disadvantages of implementing UCC in a diverse country.

Keywords: Uniform Civil Code, Constitution, Right to Freedom of religion, Right to equality.

Introduction

India is a Secular Republic that grants its citizens fundamental rights. The right to equality is protected by Article 14 of the Indian Constitution,¹ while Article 25 of the Constitution guarantees the freedom to profess, spread, and practise one's religion². Contrarily, the personal laws of India, including those governing marriage and divorce, alimony, child custody and adoption, succession, guardianship, etc., are primarily controlled and implemented in accordance with the religious texts of diverse groups, each of which has its own unique beliefs implemented in accordance with the religious texts of diverse groups, each of which has its own unique beliefs. In recent years, there have been many more arguments and conversations in India over the Uniform Civil Code (UCC), or a single code that would apply to all groups regardless of caste, creed, religion, sex, etc. The primary aim of the UCC as stated in Article 44 of the Indian Constitution is not a new development. The UCC and the discussions around its applicability have been developing for about a century. The core premise of UCC centres about secularism. The idea of secularism must be thoroughly investigated. On the altar of each of the many notions of secularism, the UCC receives praise and derision. In our society, some consider the UCC as anti-secular, while others see it as a symbol of secularism and social cohesion. The Indian government promotes the idea of secularism, which means that it respects all religions and refrains from interfering with their practises in an unreasonable manner.³ The debate over whether India needs a UCC has been further fuelled by this. It will not be inaccurate to refer to India as a secular republic *de jure* rather than *de facto*. The Indian court continues to compromise between the Directive Principles of State and the Fundamental Rights even after more than 70 years of Indian freedom.

Understanding UCC

Article 44 of the constitution speaks about Uniform Civil Code (UCC) it says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."⁴ This means that there should be a civil code that treat all sections of the society throughout the country irrespective of their religion should be treated equally. This civil code would be a set of laws governing the civil matters of the citizens in the country relating to matters like

¹ INDIA CONST. art. 14

² INDIA CONST. art. 25

³ St. Xavier's College v. State of Gujarat, 1975 SCC (1) 173 (India).

⁴ INDIA CONST. art. 44

marriage, divorce, adoption, custody of children, inheritance, succession to property etc.⁵ So the idea of UCC is clear 'One nation One principle'. So, if ever implemented, Article 44 would almost certainly sound the end to religious personal law, requiring all Indians to be governed by one secular civil code⁶, however there is less chance of this happening because this Article is found in the Constitution's Directive Principles and is therefore not judicially enforceable, as per Article 37 of the constitution.⁷ However Directive Principles are "fundamental in the governance of the country".

Since the time of British administration in India, the idea of introducing a Uniform Civil Code has been discussed. Previously the state did not interfere with its inhabitant's personal laws before the colonial era. This was done to promote harmony and peace among the various segments of Indian society and, as a result, make it simpler to rule over them.⁸ The Report of Lex Loci made note of the need for uniformity in the codification of Indian laws relating to contracts, evidence, and crime in 1840, but it cautioned against including the personal laws of Hindus and Muslims because of their complexity and inconsistent application of the law.⁹ Therefore personal laws were not made uniform for everyone in 1840, however subsequently, the Indian Marriage Act, of 1864 and the Indian Succession Act, of 1865 removed the inequalities in Christian Marriage and safeguarded women's economic interests respectively.¹⁰ Post independence the UCC was something that then-prime minister Jawaharlal Nehru and his supporters pushed for during the discussions in the Constituent Assembly in the early 1950s,¹¹ the reason that sparked the debate on UCC was the Preamble of the Indian Constitution, which contains the notion of equality, and the uneven personal laws of the Indian communities are in stark opposition to one another.¹²

⁵ Shabbeer Ahmed & Shabeer Ahmed, Uniform Civil Code (Article 44 of the Constitution) a Dead Letter, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE 545, 546 (2006).

⁶ Pratibha Jain, Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India, 23 BERKELEY J. INT'L L. 201, 210 (2005)

⁷ INDIA CONST. art. 37

⁸ Aaditya Biyani, The Importance of Uniform Civil Code vis-a-vis the Personal Laws in India, 30 Supremo Amicus 215,242 (2022).

⁹ AC Banerjee, English Law in India, Abhinav Publications 1984, 134

¹⁰ Varun Ranganathan, Uniform Civil Code - Issues and Challenges and How to Circumvent Them?, 3 JUS CORPUS L.J. 416, 418 (2022).

¹¹ Nandhini Chavan & Qutub Jehan Kidwai, Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code (Hope India Publications 2006) 90

¹² Dr. Parminder Kaur, Personal Laws of India vis-avis Uniform Civil Code: A retrospective and prospective discussion, LAW MANTRA (Oct. 08, 2023, 07:10 P.M.), <https://journal.lawmantra.co.in/wp-content/uploads/2015/05/17.pdf>

BR Ambedkar during the constituent assembly debates said that "I personally do not understand why religion should be given this vast, expansive jurisdiction, So as to cover the whole of life and to prevent the legislature from encroaching upon that field".¹³ Whereas, Pundit Jawaharlal Nehru, while defending the introduction of the Hindu code Bill instead of a UCC in parliament in 1954, said "I don't think at the present moments the time is ripe in India for me to try to push is through".¹⁴

The late 1940s saw the Constituent Assembly of India begin work on drafting the Indian Constitution, which was no easy process. Following India's independence from Great Britain, Pakistan and India were violently divided; the nation was still healing from this event.¹⁵

Understanding Fundamental Rights and Personal Laws

According to Black Laws dictionary Fundamental rights are the rights given to people of life, liberty, property, freedom of speech, assembly, press and religion.¹⁶ The relevant fundamental rights provisions of this paper are mentioned below and are further analysed using case laws.

Article 25 of the constitution in general is about Right to Freedom of Religion and specifically speaks about freedom of conscience and free profession, practice and propagation of religion.

Freedom of religion "subject to public order, morality and health and to the other provisions of this Part." Is provided under this article. The state can also regulate or restrict "any economic, financial, political, or other secular activity which may be associated with religious practice". This means that religious practice that violates gender equality can, in theory, be prohibited without violating the Constitution pursuant to the limiting factors of Article 25.¹⁷ Article 26 which speaks about Freedom to manage religious affairs in this article every religious sect is given the right to protection under Article 26 along with "to manage its own affairs in matters of religion"¹⁸. Article 29 which speaks about Protection of interests of minorities and it says

¹³ Constituent assembly debate, BR Ambedkar

¹⁴ Constituent assembly debate, Nehru

¹⁵ ARCHANA PARASHAR, WOMEN AND FAMILY LAW REFORM IN INDIA: UNIFORM Civil CODE AND GENDER EQUALITY 158 (1992) (describing partition as a "communal holocaust" that "left thousands dead and many thousands displaced, in both countries").

¹⁶ Fundamental rights, black laws dictionary, (2nd Ed)

¹⁷ INDIA CONST. art. 25

¹⁸ INDIA CONST. art. 26

that any minority group in India "having a distinct language, script, or culture of its own shall have the right to conserve the same," according to Article 29 of the Indian Constitution, is protected.¹⁹

Article 13 of the constitution speaks about laws inconsistent with or in derogation of the fundamental rights.²⁰ This provision elevates the position of these fundamental rights compared to other rights. Articles 14 and 15 protecting religious and minority groups of the same legislation are contradictory to the fundamental rights. Article 14 speaks about Equality before law in general besides acting as an umbrella provision for Articles 15, 16, 17 and 18 of the constitution.²¹ Article 15 about prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.²² Even Article 14 and 15 are Fundamental rights.

Personal Laws are those set of laws or rules governing a specific group or community, largely based on religious precepts or beliefs of that particular community.²³ When the British Empire came into being, they adopted a policy of "noninterference" with matters they believed to be deeply entwined with religion. As a result, they granted legislative immunity to certain matters (marriage, inheritance, among other traditional laws), and left the Hindu and Muslim communities to regulate their own affairs. Historically, personal laws dealt with all spheres because religion was the driving force behind rules relating to crime, punishment, trade and commerce, etc.²⁴

Hindu Personal Laws are laws governing marriage, divorce, adoption, inheritance, and parenery rights within the Hindu religious community. They are based on ancient religious texts like the Vedas, Manusmriti, and Upanishads, and the concept of Dharma, which means adherence to one's duty. Hinduism is the oldest active religion, and many regressive customs and traditions have become part of the law. Key aspects of the law may have been sanctioned by patriarchal norms made by elite Brahminical men in power. The Hindu Personal Laws apply to Hindus, Sikhs, Jains, Buddhists, and other communities. However, there is no specific

¹⁹ INDIA CONST. art. 29

²⁰ INDIA CONST. art. 13

²¹ INDIA CONST. art. 14

²² INDIA CONST. art. 15

²³ Aditi Tiwari & Vinayak Tiwari, Challenges between Personal Laws & Uniform Civil Code, 1 LEXFORTI LEGAL J. 52, 54 (2019).

²⁴ Id at 54

definition of who is a Hindu, leading to a negative definition of the term Hindu.²⁵

The Hindu Succession Act, 1956, governs intestate property succession among Hindus. Although amended in 2005 to ensure parity between male and female successors, issues persist. The act divides property distribution between male Hindus and female Hindus. Sections 15 and 16 outline the hierarchy of rightful heirs and distinguish between self-acquired and inherited property. The succession of self-acquired property follows the deceased's children, widow, mother, and grandchildren, unlike the male intestate succession rule.²⁶

In *Mamta Dinesh Vakil v. Bansi S. Wadhwa*²⁷, it was declared that Section 15 of The Hindu Succession Act, 1956 is discriminatory and violates the constitution because it again discriminates based on gender. Despite recommendations from the Law Commission (207th report), the legislature has not yet passed any other laws repealing the provision.

The Muslim Personal Laws, which were introduced by the British Government in 1937, are a form of uncodified guidelines that governs inheritance, marriage, charity, and successions among Muslims. The Shariat Act, introduced by the British Government, is exclusive to Muslims and has undergone numerous changes over time. The furthest record of Muslim laws in India was in 1206, and since then, there have been multiple invasions of Muslim leaders and the rise of Muslim-ruled Dynasties.²⁸

The Shariat Act provides rules and guidelines for decisions in cases involving intestate succession, special property of females, marriage, dissolution of marriage, maintenance, Dower, Guardianship, Gift, Trust and trust properties, and Wakf. The law of succession and inheritance has its principles from four principal sources of Islamic Law: the holy Quran, the Sunna, the Qiya, an analogical deduction of what is good or bad in a certain situation according to God, and Ijma, a consensus of learned men of a community deciding on a certain matter. The Shariat Act of 1937 is applicable in both testamentary and non- testamentary succession. When a man dies, both son and daughter receive the share in property, but the share of the daughter is generally half of the male. Mehr, an obligatory money or property received by a woman upon

²⁵ Aditi Tiwari & Vinayak Tiwari, Challenges between Personal Laws & Uniform Civil Code, 1 LEXFORTI LEGAL J. 52, 55 (2019).

²⁶ Hindu Succession Act, No. 30 of 1956, § 15-16 (India)

²⁷ *Mamta Dinesh Vakil v. Bansi S. Wadhwa*, (2012) SCC 1685

²⁸ Rahiman, Kka (1986). History of the evolution of muslim personal law in india. Journal of Dharma 11 (3), 259

her Niah or marriage, can be received at both the time of marriage or after the dissolution of marriage or death of the husband. A wife without no child is entitled to receive a quarter share of property of her deceased husband, though with children, they are entitled to one-eighth the share of the husband's total property.²⁹

In rural Northern India, Muslim women were either unaware of the inheritance right granted to³⁰ them by the Shariat Act or would give up their rights due to the fear of souring relationships within their family. Patriarchal forces in society suppress the voice of women and control property rights. The contemporary perception of Muslim women in India, being restricted to just household chores, is disheartening.³⁰

The Indian Parliament abolished Triple Talaq in July 2019, making it illegal. This act included provisions for divorce and Triple Talaq, which allowed only husbands to dissolve their marriages.

In Marium vs. Md. Shamsi Alam (1979),³¹ a husband divorced his wife due to her health issues, but later revoked the divorce during the iddat period. The Allahabad High Court ruled that the husband's utterance of the word 'talaq' in one breath was revocable and he should not be serious about the divorce. The case highlighted the court's liberal interpretation of Muslim law rules to prevent hasty and unconsidered divorces. In Rahmat Ullah vs. State of UP³², the Allahabad High Court declared Triple Talaq unlawful, contradicting the Quran and Indian Constitution.

In Shamim Ara v. State of U.P. A.N.R. (2002)³³, the apex court declared Triple-Talaq banned.

The challenges faced by Muslim women are not due to talaq but un-Islamic customs. TripleTalaq is contrary to Shariah and is forbidden. Dowry is also prohibited by Islam, but women and their families still bear the expenses of the marriage.

²⁹ The Shariat Act of 1937

³⁰ Saadiya Suleman. "Muslim Personal Law and Gender Equality Concerns in India", "Advances in Social Science, Education and Humanities Research, Volume 162, International Conference on Law and Justice (ICLJ 2017)"

³¹ Marium v. Mohd. Shamsi Alam, (1979) SCC 896

³² Rahmat Ullah v. State of U.P., 1994 SCC OnLine All 1072

³³ Shamim Ara v. State of U.P. A.N.R. (2002)

The Role of Judiciary

The Indian judiciary, particularly the Supreme Court, has frequently been at the centre of the Uniform Civil Code debate. Determining the highest court's position in this case therefore becomes vital by understanding its interpretation.³⁴ Series of Supreme Court's cases will be discussed followed by which an analysis of the impact of these judgements on fundamental rights and personal will be done.

*Omprakash & Ors vs Radhacharan & Ors*³⁵ is a case involving the succession of property of Narayani Devi, a widow who died intestate. The Supreme Court ruled that sentiments and sympathy should not guide law interpretation, and the Hindu Succession Act (HSA) specifically states that self-acquired properties will pass on to husband's heirs if the deceased did not have children and husband. The court argued that the legislature intended to send the property back to the source, considering the money spent by the deceased's family to educate her. The succession laws in Hindu law are discriminatory, with property inherited from the deceased's father or mother devolving first to the father's heirs.

The 1952 Bombay High Court case of *The State of Bombay vs Narasu Appa Mali*³⁶ was a landmark judgement that opened a Pandora's box regarding the applicability of personal laws in Article 13. The case dealt with the Bombay Prevention of Bigamous Hindu Marriages Act, 1946, which sought to render bigamous marriages void and criminalize the offence of bigamy. The petitioner challenged the validity of the act on the grounds that it violated his right to profess and practice any religion, as Hinduism sanctioned bigamy or polygamy. The court held that the act could not possibly violate Article 25 since it is not an absolute, unlimited right and is subject to restrictions. The state legislature had attempted to reform Hindu personal law, considering marriage as a sacrament in the religion. However, the state was wrong in marking a distinction between the two, violating Article 14. The court also exclusion of personal laws from the expression 'laws in force' from Article 13(1).

The court decided that personal laws differ from customs and could not include in the ambit of Article 13. It reasoned that the expression 'laws in force' only meant statutory laws and took

³⁴ Varun Ranganathan, *Uniform Civil Code - Issues and Challenges and How to Circumvent Them?*, 3 *Jus Corpus* L.J. 416, 419 (2022).

³⁵ *Omprakash v. Radhacharan*. (2009) 15 SCC 66.

³⁶ *State of Bombay v. Narasu Appa Mali*, 1951 SCC OnLine Bom 72

the help of Article 372, which is the president's power to modify or adapt laws to bring them to parity with part III of the constitution. Personal laws derive their validity from their respective scriptural texts, not from the Legislature or other competent authority. Customs are principal sources in both Hindu and Mohammedan law, but most of the Hindu law is largely covered by scriptural texts. To hold that it is based on customs and thus include it within Article 13 is an untenable position. Additionally, customs and usages cannot be equated to personal laws because the meaning of custom and usages under clause 3 is not possible as the state itself cannot make any custom or usage.

The Supreme Court maintained the Bombay High Court's position in the *Sri Krishna Singh vs. Mathura Ahir And Ors*³⁷ case, holding that personal laws are not covered by Part III of the constitution until they are altered by custom or statute. With *C. Masilamani Mudaliar & Ors vs. The Idol of Sri*³⁸, a landmark decision was won in 1996, establishing that personal laws drawn from religion texts must be compatible with the constitution unless they violate basic rights. The following case before the Supreme Court, *Ahmedabad Women Action Group.... v. Union of India*³⁹, alleged discrimination in certain personal law provisions. The court maintained the *Narasu* ruling and argued that the legislature should resolve these problems, without citing any reasons why personal laws cannot be subject to judicial review.

The 2018 *Sabrimala* judgement, *Indian Young Lawyers Association vs The State of Kerala*⁴⁰, a landmark case in India, reopened the debate on patriarchal customs in religious practices. The court struck down the age-old custom of prohibiting women aged 10-50 from worshipping at the *Sabrimala* shrine, stating it was unconstitutional and violating the right to freedom of religion under Article 25. The court also held that worshippers of Lord Ayyappa, the main deity of the shrine, are Hindus and subject to Article 25(2), being subject to the state's social reform.

Justice Chandrachud's observation on the *Narasu* judgement, which was covertly overruled on the point of customs and usages being immune from judicial review, argued that it takes away the primacy of the constitution and detracts from its transformative nature. He stated that it is the court's duty to deny protection if it takes away equality in any shape or form. The judgement

³⁷ *Shri Krishna Singh v. Mathura Ahir*, (1981) 4 SCC 421

³⁸ *Paramjit Anand v. Mohan Lal Anand*, (2018) SCC 8181

³⁹ *Ahmedabad Women Action Group (AWAG) v. Union of India*, (1997) 3 SCC 573

⁴⁰ *Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala*, (2019) 11 SCC 1

held that there was no difference between 'laws', 'laws in force', and personal laws, as they are intrinsically mixed up.

The Supreme court has had varying stances on the same point of law, which fly in the face of the Constitution. The Bombay High Court's 68-year-old judgment remains judicially valid and upheld, and it has been concurred with by various other High Courts and the apex court. The decisions of the courts in this regard are a kick against the transformative nature of the Indian constitution and remind us why people are still bound by retrogressive conventions. If the goal is to truly reach equality before law, judgements like *Narasu* should be explicitly overruled to prevent those who still support practices that curtail gender rights.

Another landmark judgement is of *Mary Roy v. The State of Kerala* (1986)⁴¹, in this case The Travancore Christian Succession Act of 1916 was challenged in court on the grounds that certain of its provisions violated Article 14 of the Indian Constitution. In accordance with these provisions, a deceased interstate's wife and daughter were only entitled to a life interest that terminated at her death or remarriage. The Indian Succession Act has taken the place of the Travancore Act, according to the Supreme Court. Mary Roy has been described as a choice that will ensure women equity in the succession process.

In *S.R. Bommai v. Union of India* (1994)⁴², the court ruled that religion is a matter of personal belief and cannot be blended with secular activities that the state can regulate by passing legislation.

Sarla Mudgal v. Union of India, 1995⁴³ in this case, Justice Kuldeep Singh reaffirmed the requirement that the parliament draught a uniform civil code, since doing so would further the goal of national integration by eradicating ideological inconsistencies. Consequently, the state is in charge under Article 44 of the Constitution. The Supreme Court has often emphasised the importance of establishing a Uniform Civil Code.

In the case *Danial Latifi & Anr v. Union of India* (2001)⁴⁴, the Muslim Women's Act (MWA) was contested on the grounds that it infringed on both the right to life under Article 21 and the

⁴¹ *Mary Roy v. State of Kerala*, (1986) 2 SCC 209

⁴² *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

⁴³ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

⁴⁴ *Danial Latifi v. Union of India*, (2001) 7 SCC 740

rights to equality under Articles 14 and 15. The Supreme Court complemented the statute with S.125 of the CrPC, 1973 while upholding its constitutionality. S.125 of the CrPC, 1973 says that no wife shall be entitled to receive an allowance for the maintenance from her husband, if she refuses to live with her husband.⁴⁵

Union of India v. John Vallamattom & Anr. (2003) ⁴⁶in this case, a priest from Kerala named John Vallamattom questioned whether Section 118 of the Indian Succession Act, which applies to non-Hindus in India, is constitutionally lawful. Section 118 of the Indian Succession Act speaks about Bequest to religious or charitable uses. Mr. Vallamattom argued that Section 118 of the Act discriminates against Christians by placing excessive limitations on their ability to leave property to charity or for religious purposes. The bench declared the clause unlawful and invalidated it.

The Kesavananda Bharati Case (1973) ⁴⁷established that the parliament has the power to amend any part of the constitution, except its basic structure. The challenged article 31 C contained two clauses, the second being struck down as violating Fundamental Rights guaranteed by part III of the Constitution. The court upheld the 42nd amendment, but also noted that the court has the power to examine whether the law made by the parliament is for the implementation of DPSP. The validity of the first provision of Article 31 C was extended by the constitutional amendment, but in the Minerva Mills case,⁴⁸ the court declared all extensions to DPSPs void and unconstitutional. This case highlights that any law made for the welfare of society or DPSPs shall be struck down if it runs contrary to fundamental rights, and subject matters like the Uniform Civil Code will also be struck down if they are not in consonance with fundamental rights.

Impact of UCC

In a diverse country like India where there are many communities having different laws for every community would create a mess in personal laws. There are also many personal laws and customs that are centuries old like the Shariat law in Muslims or the customs in Hindus such as women aged between to fifty years of age are not allowed to visit temples. Peoples thinking

⁴⁵ Cr.P.C. § 125 (India)

⁴⁶ John Vallamattom v. Union of India, (2003) 6 SCC 611

⁴⁷ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

⁴⁸ Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625

and ideologies change overtime however these personal laws and customs do not change with time, and it makes difficult for people to adopt with it. Furthermore, these laws and customs have patriarchal characteristics in them in things like succession of property or in cases of divorce. Polygamy is a controversial issue and its stand is opposite for different religion, for instance in case of Muslims polygamy is not prohibited whereas in case of Hindus it is prohibited. The solution to all these issues mentioned above is UCC, using this we can ensure that the personal laws for every person irrespective of which religion they profess of their customs will be the same. The need for UCC was also said by a Constitution bench speaking through Justice Y V Chandrachud in Mohd. Ahmed Khan v. Shah Bano Begum ⁴⁹said that "It is a matter of regret that article 44 of our constitution has remained a dead letter.... It provides that the state shall endeavour to secure a uniform civil code for citizens throughout the territory of India. There is no evidence of any official activity for forming Uniform Civil Code in the country. A belief seems to have gained ground that it is for a muslim community to take a lead in matter of reforms of their personal law. A common civil code will help the cause of national integration by removing disparate loyalties to laws, which have conflicting ideologies. No community is likely bell the cat by making gratuitous concessions on this issue". There are many personal laws in contradiction to different public laws and the constitution's fundamental rights. So if UCC is implemented the contradiction can be removed and there can be same law for everyone. However, the problem with UCC is that it is under Article 44 which is a Directive Principle of State Policy and according to Article 37 of the same part it cannot be applied in courts. This means that Article 44 is mere advisory to the government to make Uniform Civil Code.

Understanding Pros and Cons of UCC

In a diverse country like India, the implementation of a Uniform Civil Code across the country would be an uphill task for the enforcers due to various reasons which will be discussed below:-

- 1) Conflicts within the constitution: The conflict between the right to freedom of religion granted by Article 25 and the right to equality and equal treatment under the law granted by Article 14 is the main obstacle to obtaining consistency in personal law. This is because personal laws are considered religious beliefs because they are taken from

⁴⁹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

religious sources and should therefore not be changed⁵⁰.

- 2) Hindrance from Minorities: The opposition from minorities is the next major issue. According to the perception of the minorities, a uniform civil code would force them to imitate the religious practices of the majority group instead of continuing with their own holy traditions. They see this as a violation of their freedom to practice their religion. Their perception is reasonable; therefore, you should deal with it carefully⁵¹.
- 3) Absence of consensus: The state has a positive obligation to create a Uniform Civil Code under Article 44 of the Constitution, even though it is an unenforceable directive principle. The code has not been created or put into practice after more than 60 years of discussion. Because there is no clear idea of what should be in a model UCC, there is a complete absence of consensus, which contributes significantly to the status quo. The constitution neither specifies a deadline for Article 44's implementation nor does it provide a process for its creation. It does not even refer to the UCC other than in Article 44 and Article 372, which talk about the president's ability to overturn or amend laws established by a competent body and do not cover personal laws. The sixth schedule of the constitution also grants the northeastern states certain exclusive legislative authority over issues like family law and customs⁵².

After discussing the various drawbacks of implementing the Uniform Civil Code, further, this paper throws light on the positive side obtained by implementing the Uniform Civil Code: -

- 1) Improves the status of Women: - In India, several personal laws are thought to discriminate against women, particularly those that deal with inheritance, marriage, and divorce. By guaranteeing equal rights and protections to all citizens, regardless of their faith, a UCC would assist in enhancing the status of women. Personal laws violate women's rights and fail to recognize them as having the same rights as men, suggesting that Indian society is caught in a web of patriarchal ethics and is unable to recognize and value women's human rights. Therefore, the Uniform Civil Code will bring a

⁵⁰ Varun Ranganathan, Uniform Civil Code - Issues and Challenges and How to Circumvent Them?, 3 Jus Corpus L.J. 421-22 (2022).

⁵¹ Soumalya Ghosh, Uniform Civil Code: An Ideal Vision of Modern India, 9 Indian J.L. & Just. 214-15 (2018).

⁵² Aditi Tiwari & Vinayak Tiwari, Challenges between Personal Laws & Uniform Civil Code, 1 LexForti Legal J. 52-53(2019).

change in the societal status of women⁵³.

- 2) Helps in simplifying the legal system: - The diverse religious groups follow different personal laws, which makes the legal system very vast and complex. The Uniform Civil Code will bring in a single set of common laws which will make the legal system very simple because it will be removing the current system of different laws for different groups.
- 3) Promotes the interests of every religious group: - With a UCC, all citizens would be subject to a single set of laws that would protect religious minorities' rights. All citizens should have equal rights in areas including inheritance, divorce, and marriage, according to the UCC. The UCC might forbid discrimination in marriage and divorce laws based on a person's religion, as an illustration. The UCC could be utilized to stop discrimination based on religion in family law cases. The UCC might forbid discrimination against religious minorities in situations like child custody and visiting rights, for instance⁵⁴.
- 4) Upholding national unity: - By fostering a common set of rules and values that are relevant to all residents, regardless of their faith, the introduction of a UCC would create national integration and harmony. This would foster a more unified and peaceful society by lowering conflicts and tensions caused by religious differences. For instance, the UCC might promote interfaith unions, which might aid in fostering understanding amongst various religious groups⁵⁵.

Conclusion

To sum up it would be right to say that India, which is secular needs UCC after surviving for more than seventy years without a common civil code and laws that are not centuries old but a new one. However, because such religious reforms are challenging for many people to accept, such a standard code should be designed so that it neither violates the basic rights protected by the constitution nor conflicts with the personal laws of any community. All personal laws

⁵³ Anjali Sawhney & Mohit Kumar Gupta, Uniform Civil Code: A Feminist Perspective, 4 Issue 2 Indian J.L. & Legal Rsch. 12-13 (2022).

⁵⁴ Vaishnavi Suresh, Uniform Civil Code for the Citizens, 4 Issue 1 Indian J.L. & Legal Rsch. 6-7 (2022).

⁵⁵ Swapnil Suman & Rohit Kumar Sahu, Arguments for and against Implementation of Uniform Civil Code in India, 5 Issue 2 Indian J.L. & Legal Rsch. 2-3 (2023).

should be codified in order to promote gender equality while maintaining religious features. The Indian Constitution unquestionably grants Parliament the power to enact the Uniform Civil Code, but they can only be implemented if the citizens of our country agree to live under them.

They cannot be implemented without community support, and if they are forced through for the sake of unification, they will destroy peace and order by generating mass animosity. This will ultimately destroy the only goal of fundamental rights and the guiding principles of governmental conduct. The judiciary was successful in recommending a uniform civil code for the nation.