
UCC AS A TOOL FOR "NATIONAL UNITY": A HISTORICAL CRITIQUE OF THIS ARGUMENT IN INDIA, REFERENCING THE DEBATES ON THE HINDU CODE BILL, AND ITS EFFECTIVENESS IN FOSTERING NATIONAL INTEGRATION

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Research Question

How did the normative concerns of national integrity, parity between laws and gender justice shape the need for UCC in the post-colonial India?

Uniform Civil Code: A herald for unity in diversity

India is a land of diversity encompassing and embracing varied landscapes, numerous languages and dialects, and a wide array of cultures, religions, and ethnicities. This diversity not only makes India unique compared to any other nation but also raises concerns of cooperation and survival. Yet time and again, the people of India have come past their differences and united against invaders, tyrants and colonisers to prove our unity in diversity is the beauty and the test of our civilization.

Laws of the country not only govern the state but also have held it together in times of peace and crises. But sustaining unity in a diverse nation requires not just constitutional design but also constant renewal of cooperative and institutional trust. The debate on the UCC, which seeks to bring a multitude of personal laws under one common civil framework, is grounded in a similar pursuit of national unity.

The story of Article 44 of the Constitution

In a dissent note to a report by the sub-committee of the Advisory Committee of the Constituent Assembly, demarcating justiciable and non-justiciable fundamental rights, 3 members of the Committee asserted their view in favour of granting justiciability to UCC and added that : “One

of the factors that has kept India back from advancing into nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period 5 to 10 years...”¹

On 23rd of November 1948, the Draft Proviso for Uniform Civil Code was taken up and the members of the Assembly debated over it. The Muslim members argued in a fashion akin to the *Lex Loci Report* of October 1840² which had suggested that the laws of personal nature may not be needed to be codified. A vast majority of Muslim scholars opposed the Draft Proviso Article 35. The main argument that was brought up was that - the passing of a UCC shall in the most ordinary course of action, get in the way of the family related laws of the different religions and where such interference was without prior approval of the religious communities, it may create disharmony.

On the other side of the debate were the proponents of the Code who argued that the UCC was based on the principles of secularism enshrined in the Indian Constitution and thus, was a step towards national unity. KM Munshi emphasized on the question of how can reform be expected in the women are treated even among the Hindus if the UCC isn't enacted for all.

Alladi Krishnaswami Aiyar, while addressing the argument that UCC may lead to disharmony among various communities, clarified that a pragmatically adopted UCC should in fact create amity among the people.

Ambedkar emphasized that the UCC was an option at its best. Since it was enshrined in the DPSP, the State is not under compulsion to enact a legislation to this provision immediately. Additionally, such procedures are maintained where enactment of UCC requires prior approval from the communities concerned.

It was long after this that the Draft Article 35 was put to vote. Consequently, it was adopted – to be later re-numbered as Article 44³ of the Indian Constitution.

¹ Centre for Law & Policy Research, *UCC Part I: Constitutional History* (CLPR, November 2017) <https://clpr.org.in/wp-content/uploads/2017/11/UCC-Part-1-Constitutional-History.pdf> accessed [8 October 2025].

² *Report on the Lex Loci (October 1840)*, reprinted in *Selections from the Records of the Government of India: Legislative, No. V* (Calcutta 1851)

³ Constitution of India 1950, art 44.

Important Judicial and Legislative Developments

Shah Bano was unilaterally divorced by her wealthy husband in 1978 who had pronounced “triple talaq” 3 times in a row to divorce her. He paid her the pre agreed mahr amount during the iddat period as mandated in Muslim law. However, she filed a petition to claim maintenance under Section 125⁴ of CrPC from her former husband. The impugned order of 1979 awarded Rs. 179.20 every month as maintenance to her.

Her former husband, Mohammed Ahmed Khan, argued that since he had paid the mahr amount as per the Muslim Law, he was obliged under section 125 of CrPC to maintain his former wife. In 1981, he thus, petitioned the Apex Court to challenge the decision. The Court, however, asserted that section 125 CrPC is neutrally applied to all religions and thus, includes Muslims as well.

This very case, Mohammed Ahmen Khan v. Shah Bano Begum⁵ was also the first time that the Courts brought up the topic of UCC for discussion and remarked with disapproval that Article 44 of the Constitution had largely remained ineffective.

The court reflected: “The role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code.”

In the same year, in *Jorden Diengdeh v S S Chopra*⁶ the Court had to decide if a marriage could be nullified under the *Indian Divorce Act, 1869*, on grounds of impotence. The Court noted the lack of uniformity between codified personal laws related to divorce as the Hindu Marriage Act allows the marriage to be dissolved after a year of judicial separation, while the Indian Divorce Act does not. The Court saw this case as a proof of, to quote the Court, “totally unsatisfactory state of affairs consequent on the lack of a uniform civil code”⁷.

The Court urged the government to come up with a UCC once again a decade later in a public interest litigation seeking to outlaw the practice of Hindu men abandoning their wives, without

⁴ Code of Criminal Procedure 1973, s 125.

⁵ *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556 : AIR 1985 SC 945.

⁶ *Jorden Diengdeh v S S Chopra* AIR 1985 SC 935 : (1985) 3 SCC 62.

⁷ *Jorden Diengdeh v S S Chopra* AIR 1985 SC 935 : (1985) 3 SCC 62.

lawfully divorcing them, and converting to Islam for the sole purpose of marrying a second time (*Sarla Mudgal, President, Kalyani and Others v Union of India and Others 1995*).⁸

Today, as we enter a decisive stage for the debate on the Uniform Civil Code as the Modi government at the Centre seems to be moving towards implementing it, radical Muslim leadership and most of the Opposition parties have also expressed their strong criticism of the Code. With the Uttarakhand State Legislative Assembly passed - Uniform Civil Code, Uttarakhand, 2024 Bill, making Uttarakhand the second state in India (first being Goa since 1961), and the first in independent India, to have a UCC. Many other states like Assam and Gujrat are also working on the implementation of the UCC.

UCC and Gender Justice

In India a law relating to personal matters like marriage, inheritance, divorce is based on religion, tradition, scripture and culture, codified under a colonial emphasis on religious scriptures over local traditions and contains provisions which are often discriminatory to women. For example a Muslim male is allowed to practice polygamy. He is not obligated to maintain his wife or children as long as he pays the pre agreed mahr amount during the iddat period itself.

Such provisions that are unjust to women persist even in the Hindu and Christian personal laws. The Constitution of India symbolises the philosophy of an equal society. Our forefathers who framed the Constitution dreamt of a state that shall prefer no one person over the other on grounds of their religion, caste, sex, place of birth. Yet the society till date harbours weeds of patriarchy and favouritism for men on the grounds that they are often the ‘providers’. Our history and tradition points to centuries of subordination and exploitation that women have faced at the hands of patriarchal institutions. Even the law makers and judicial officers, howsoever progressive they may claim to be, are still embroiled in the vice of prejudices against women. The pro-men personal laws and judgements after judgements often interpreting law in a patriarchal manner, have only worsened the dilemma.

Alternatively, a UCC offers a lucrative opportunity of uniformity and gendered equality. It unifies the personal laws relating to marriage, divorce, etc. to a standard framework which may

⁸ Alok Prasanna Kumar, ‘Uniform Civil Code: A Heedless Quest?’ (2016) 51(25) *Economic and Political Weekly* 10.

incorporate the essence of all religions yet ensure compatibility and uniformity. It also offers the state the opportunity to put forward a progressive common civil legislation that has the potential to reform the institutional machinery of the society and abrogate discriminatory practices against women.

But while the UCC is seen as a strong harbinger of equality, the other side of the debate has long contended that it infringes on the religious freedom (the subject of Articles 25 to 30, which protect religious freedom and the educational and cultural rights of minorities). In the *Sarla Mudgal case*⁹ (1995: Para 1), the Court even explicitly holds up the Hindu Code as the model on the basis of which the UCC should be drawn up. In this regard, supporters of the Code often contend that it would be in fact inappropriate for anyone to raise such an objection unless a draft of the Uniform Civil Code at the national level comes up. Even so, it is imperative that we recognise the anomaly that the apprehension of infringement of religious freedom through the enactment of a UCC is certainly not unfounded in the current scenario of political environment in the country.

Effectiveness of the UCC in Fostering “National Unity”

India’s uniqueness comes from its ability to maintain peaceful cohabitation and co-existence among its populace that is known to be diverse in all aspects possible. Where such a diverse population, is to be put under the aegis of personal laws that are not only potentially discriminatory, but also very often conflicting in themselves, it may defeat the very sustenance that the law seeks to offer - as conflicts bring disharmony and disharmony brings divisions. ‘Ambedkar saw the UCC as an essential part of India’s secular fabric. He believed that personal laws based on religion or ethnicity violated the principle of secularism enshrined in India’s Constitution. He argued that the UCC would help to create a level playing field for all citizens irrespective of their religion or ethnicity.’¹⁰ Moreover, equality is a precursor to unity, if the law doesn’t treat all citizens as equals, how can it offer unity? If even one man is allowed to have 4 wives, it defeats the purpose of the law of equality in its essence.

‘There are two possible courses of action for enacting the UCC: either codification of all family laws accompanied with bringing them into compliance with basic rights, or a whole new

⁹ *Sarla Mudgal v. Union of India* (1995) 3 SCC 635, 636.

¹⁰ Pooja Paswan, ‘Dr. B.R. Ambedkar’s Legacy: How the Uniform Civil Code Will Contribute to Social Justice and Equality in India’ (14 April 2023) PA TIMES Online <https://patimes.org/dr-b-r-ambedkars-legacy-how-the-uniform-civil-code-will-contribute-to-social-justice-and-equality-in-india/> accessed [09 October 2025].

legislation which replaces all personal laws.’ In either of these cases, it is assumed in all possibilities that the consequence would be a more unified and uniform law for marriages, divorce and so on. Law plays an elementary role in social, political and economic existence. A Uniform Civil Code is thus, no triviality, for fostering national integrity.

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