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# **A TOUGH ROW TO HOE: IMPLEMENTING A UNIFORM CIVIL CODE WHILE SAFEGUARDING RELIGIO- CULTURAL RIGHTS OF MINORITY COMMUNITIES IN INDIA**

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## **ABSTRACT:**

The Constitution of India prescribes enjoins the State to create a uniform civil code. Such a code purports to be a solution to the heterogeneity in family law and to secure the rights of women and children in family law while promising the eradication of societal evils and enabling faster procedures in family matters. Indian Family law being rooted in religion, culture, and customs makes it imperative that the creation of such a code be based on equitable representation of all affected parties and consensus of all communities on provisions and for it to be cognizant of protecting essential religious, cultural, and customary practices.

Heterogeneity in religion, culture, community, language and script in India has been the nation's chief identifier, characteristic and essence. However preservation of religious and cultural pluralism and accordance of importance to all ideas, beliefs and faith while maintaining a balance between conflicting rights proves to be a herculean task. Ever since the Constituent Assembly debates, a Uniform Civil Code (hereafter, UCC) has been prescribed as a solution to the variance of personal laws and family law in the country. A UCC envisions uniformity of family law in the country with the threefold objective of commonality and uniformity within personal law, homogeneous protection of rights of women and children within family law, and security to the rights of religious and cultural minorities. Article 44 of the Constitution of India enjoins the state to aspire to create and implement a uniform civil code within the territory of India.<sup>1</sup> State is tasked with the responsibility to strive to create a uniform civil code for citizens.<sup>2</sup> The placement of the Article 44, is in the Directive Principles of State Policy, thus being hit by Article 37 of the Indian Constitution which states that Directive Principles are not enforceable but serve as guiding principles during legislating and policy-making processes.

### ***Mooting in favour of UCC:***

Religion, faith, sect and culture determine and govern the personal laws in India with different laws for marriage, divorce, succession, adoption and guardianship such as The Hindu Marriage Act, personal law for Muslim marriages, The Parsi Marriage Act, The Indian Christian Marriage Act and The Special Marriage Act, as well as cases of state-specific law such as the Portuguese Civil Code which is applicable only in the State of Goa. The Guardians and Wards Act, 1890 and its supplemental legislation applicable to Hindus, The Hindu Minority and Guardianship Act, 1956 governs guardianship, while the subject of adoption is dealt with under The Hindu Adoptions and Maintenance Act for Hindus and the Juvenile Justice Act, 2015 for the rest. Women's rights are protected explicitly by the Muslim Women (Protection of Rights on Marriage) Act, 2019 and sparsely under other laws.

Procedure-wise, each state being free to legislate in this regard, a few states such as Andhra Pradesh, Delhi, Goa, Gujarat, Himachal Pradesh, Karnataka, and Maharashtra have made registration of marriages mandatory while it is optional in other states<sup>3</sup> A Supreme Court decision in 2006<sup>4</sup> directing the Centre and the States to make registration of all marriages

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

<sup>2</sup> Mohd. Ahmed Khan vs. Shah Bano Begum AIR 1985 SC 945

<sup>3</sup> <https://www.mea.gov.in/images/pdf/faq-marriages-of-indian-women.pdf>

<sup>4</sup> Seema v. Ashwani Kumar AIR 2006 S.C 1158

compulsory, led to a slew of state legislations covering the same.<sup>5</sup> Other procedural matters such as place of marriage, requirement of witnesses, processing timelines, and number of visits to register marriage are different for each state, causing further administrative complexity.<sup>6</sup> Governance issues aside, such inconsistencies in procedure and law allow social evils such as child marriages, trafficking, polygamy, exploitation of women, and marriage fraud to fester.<sup>7</sup> Registration of marriages under uniform legislation is essential in providing proof of marriage<sup>8</sup> and being evidentiary value in custody matters<sup>9</sup>. UCC also provides a fresh chance to rectify regressive ideas, and policies and eradicate social evils. Adoption matters, which currently lie under two legislations, can be streamlined and the rights of all women in marriage and after marriage could be accorded due protection due to registration<sup>10</sup> and uniformity in the same. UCC will help in solidifying national integrity by removing ideology contradictions.<sup>11</sup>

### ***Challenges posed to the implementation of a UCC:***

The Constitution itself poses a dichotomy to the creation of a uniform civil code in the country. Any inadequacy in the creation and implementation of a UCC threatens to conflict with Articles 25, 26, 29, and 30 of the Indian Constitution. Religious and cultural pluralism is innate in the fabric of the nation and asks for an inclusivist approach<sup>12</sup> The UCC potentially poses a question as to how unique minority interests, ideas, faith, and images could be preserved and accepted<sup>13</sup> in the country while fulfilling the goal of establishing uniformity in laws. UCC, still being an abstract idea and absent on paper, makes it somewhat difficult to believe that the myriad customs and rights of minorities might be respected and protected under it.

The Goa example is touted as the crown jewel of a successful implementation of UCC. However, there seem to be some covert deficiencies that have remained unaddressed by the state. The Portuguese Civil Code, 1961, which aimed at securing gender equality, provides spouses equal rights in assets among other positive traits. However, rights still seem to be tilted

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<sup>5</sup> States such as Rajasthan in 2009, Uttarakhand in 2010, Meghalaya in 2012 and Jharkhand in 2017 passed legislations mandating the registration of marriages in the state.

<sup>6</sup> *Registration of Marriages – Simplification of Processes and Facilitation of Greater Access to Women's Rights and Entitlements* [https://india.unfpa.org/sites/default/files/pub-pdf/unfpa\\_note\\_-\\_registration\\_of\\_marriages\\_formatted2.pdf](https://india.unfpa.org/sites/default/files/pub-pdf/unfpa_note_-_registration_of_marriages_formatted2.pdf)

<sup>7</sup> Seema v. Ashwani Kumar AIR 2006 S.C 1158

<sup>8</sup> Baljit Kaur & Anr v. State of Punjab & Anr. (2008) 151 PLR 326

<sup>9</sup> Seema v. Ashwani Kumar AIR 2006 S.C 1158

<sup>10</sup> Kanagavalli v. Saroja (AIR 2002 Mad 73), wherein the Madras High Court stressed on the importance of registration in providing security to women.

<sup>11</sup> Sarla Mudgal v. Union of India (1995) 3 SCC 635

<sup>12</sup> Ms. Aruna Roy and Ors v. Union of India and Ors. 2002

<sup>13</sup> Santosh Singh v. Union of India and anr AIR 2016 SC 3456 Sarla Mudgal v. Union of India (1995) 3 SCC 635

in the male spouse's favour with the husband having a managerial right over the estates. The applicability of the Code is also restricted only to 'Goans', the definition of which being persons born in Goa before the date of 20th December 1961 and their descendants for up to three generations. There is a lack of uniformity within the code itself, with different rules for Hindus, Catholics, and Muslims.<sup>14</sup> In India the UCC has also been a segment of political manifestos<sup>15</sup>, thus making it an unsavoury issue for persons with opposing political opinions. This, coupled with a lack of awareness about the UCC, causes feelings of hesitance and distrust within the society, consequently delaying its inception.

### ***Manoeuvring legislative and policy provisions:***

Since personal laws are rooted in religion, belief, and faith, it becomes imperative to consult the community before legislating concerning their customary rights. The Hindu Marriage Act<sup>16</sup> which requires the Saptapadi ceremony validity of marriage, The Parsi Marriage Act<sup>17</sup> where the validity of marriage rests Parsi form of ceremony which is termed the "Ashirvad"<sup>18</sup> and so on tell us that such ceremonies should essentially remain untouched without guidance, and permission obtained from the religious heads and people of that community. The Law Commission has opined that it is essential to preserve the diversity of personal laws to avoid violating the fundamental rights under the Constitution.<sup>19</sup> The way out of this conundrum is to move towards codification of all personal laws first.<sup>20</sup> There needs to be consensus over what a UCC would entail - whether it proposes the coexistence of personal laws with the code or if it seeks to replace all personal laws.<sup>21</sup> The Supreme Court sides with the view that gradual change and informed consent of communities is prudent.<sup>22</sup>

A lack of support for such a Code arises firstly from the lack of a code for reference. The Centre hence needs to prioritize coming up with a draft code before consultation which then must be referred extensively to every religious, cultural, and regional subgroup for consultation to determine essential practices. Consequently, the state needs to generate ample awareness

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<sup>14</sup> *Goa is the only state with a Uniform Civil Code. Here's what it looks like*  
<https://indianexpress.com/article/india/goa-is-the-only-state-with-a-uniform-civil-code-heres-what-it-looks-like-8894824/>

<sup>15</sup> <https://www.indiatoday.in/law/story/uniform-civil-code-challenges-and-debates-over-the-years-2393239-2023-06-15>

<sup>16</sup> Section 7 of the Hindu Marriage Act, 1955

<sup>17</sup> The Parsi Marriage and Divorce Act, 1936

<sup>18</sup> The Parsi Marriage and Divorce Act, 1936, Section 3(1)(b)

<sup>19</sup> Law Commission Consultation Paper on Reform of Family Law, 31st August 2018

<sup>20</sup> Law Commission Consultation Paper on Reform of Family Law 31st August 2018, Para 1.3

<sup>21</sup> Law Commission Consultation Paper on Reform of Family Law 31st August 2018, Para 1.10

<sup>22</sup> Shayara Bano v. Union of India (2017) 9 SCC 1

programmes on the benefits and pitfalls of a uniform civil code. The Goa example could be made useful in understanding procedural complexities. A UCC if implemented, must work toward establishing uniformity of procedure in the first instance, while eradicating inherent societal evils. Finally, each provision needs to be passed through a gender-sensitive and child-rights-based lens to avoid intersectional discrimination.